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EVALUATION AND SYSTEM DESCRIPTION OF ASAP JUDICIAL SYSTEMS

Volume V: Phoenix, Arizona Case Study

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16. Abstract This study is a description and evaluation of the adjudicative-disposition systems in operation in five states and communities with Federally funded drinking-driver control programs called Alcohol Safety Action Projects (ASAP). The five sites selected had undergone significant change in the legal or judicial system or had developed innovative approaches for handling drinking-driving cases. Case studies were conducted for Puerto Rico; Phoenix, Arizona; Los Angeles, California; Hennepin County, Minnesota; and Idaho. A final technical report consists of a summary and analysis of the case-study findings with final conclusions and policy recommendations. The primary objective of the Phoenix case study was to document and assess the efforts of the Phoenix drinking-driver control system to manage an exceptionally large volume of drinking-driving cases and to provide an inducement for DWI offenders to participate in appropriate alcohol therapy. The study described and evaluated a special prosecution-based program called PACT. PACT is a comprehensive plea-bargaining program designed to provide an expedient, uniform, and fair method of classifying and diverting DWI offenders into a short-term alcohol rehabilitation program with the incentive of earning a plea bargain which avoided a mandatory jail sentence. The PACT concept was found to be effective and transferable to any system requiring a routine, high-volume but discriminating referral mechanism.			
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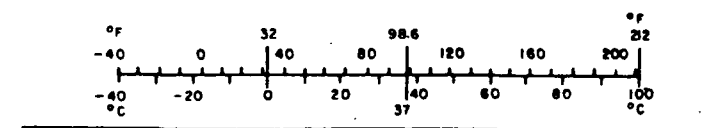
METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
LENGTH				
in	inches	2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
AREA				
in ²	square inches	6.5	square centimeters	cm ²
ft ²	square feet	0.09	square meters	m ²
yd ²	square yards	0.8	square meters	m ²
mi ²	square miles	2.6	square kilometers	km ²
	acres	0.4	hectares	ha
MASS (weight)				
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
VOLUME				
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft ³	cubic feet	0.03	cubic meters	m ³
yd ³	cubic yards	0.76	cubic meters	m ³
TEMPERATURE (exact)				
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
LENGTH				
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
AREA				
cm ²	square centimeters	0.16	square inches	in ²
m ²	square meters	1.2	square yards	yd ²
km ²	square kilometers	0.4	square miles	mi ²
ha	hectares (10,000 m ²)	2.5	acres	
MASS (weight)				
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
VOLUME				
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m ³	cubic meters	35	cubic feet	ft ³
m ³	cubic meters	1.3	cubic yards	yd ³
TEMPERATURE (exact)				
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



* 1 inch = 2.54 centimeters. For other exact conversions and more information, see the U.S. Bureau of Standards, National Bureau of Standards, Division of Weights and Measures, Publication 220, SI Units and the SI System, 1975.

PHOENIX ASAP JUDICIAL SYSTEM

EXECUTIVE SUMMARY*

The Phoenix study was carried out to determine the effects of an innovative plea bargaining program intended to deal with a large backlog of court cases. On-site interviews with key personnel, study of literature generated by the Phoenix Alcohol Safety Action Project (ASAP), and observations of the system in action were the principal methods of research.

The innovative program, called the Prosecutor's Alternative to Court Trial (PACT), was developed by ASAP personnel with the cooperation of the Phoenix City Court. Both the ASAP and the court were unhappy with the existing plea bargaining system, a traditional legalistic process that involved negotiations between the prosecutor and the defense attorney. Defendants themselves were not part of this plea bargaining and were not required to take any positive step in order to win the right to plead guilty to a reduced charge. Thus, defendants in successful plea bargains never received education or rehabilitation as the result of a DWI arrest.

Under PACT, however, defendants involved in plea bargaining were required to participate in an appropriate education or rehabilitation program before the charges were reduced.

PACT was developed as an alternative to the traditional type of plea bargaining because of an upsurge in contested DWI court cases. This upsurge had a variety of causes, including stronger enforcement sponsored by the

* Evaluation and Systems Description of ASAP Judicial Systems, Volume V, Contract No. DOT-HS-4-00958, Institute for Research in Public Safety, Indiana University, July, 1977.

ASAP; a new State statute mandating a 1-day jail term for all first-time DWI offenders; a Federal requirement that indigents have free legal representation if they would face time in jail upon conviction, and a lowering of the drinking age.

The PACT program aroused considerable controversy at first. The city attorney refused to take part in the program initially, and prosecutions were conducted only by three prosecutors hired with ASAP funds. The success of the program, however, later caused the city attorney to accept the program. Members of the State legislature and police officers, also skeptical in the beginning, came to admire the program's efficiency. PACT's standardization of the processing of DWI offenders caused some unhappiness among defense attorneys, whose business suffered. They also pointed out some flaws in the program, however, including the fact that recidivists were excluded even though they were probably in greater need of education or rehabilitation.

Numerous statistics indicate PACT's success. During 1975, the first full calendar year of operation, virtually 100 percent of those arraigned on a DWI charge pleaded not guilty, and 82 percent subsequently enrolled in education or rehabilitation programs as a result of plea bargaining. Under PACT, 93.2 percent of all offenders received final sentencing within 6 months, compared to 74.5 percent under the old procedure. PACT also reduced the number of appeals of DWI convictions from 641 in 1973 to a mere 9 in 1975.

In view of the Phoenix study's results the following hypotheses seem applicable:

1. Legislation alone is not enough to bring about all the changes needed to improve the judicial system's approach to DWI cases.

2. The threat of trial is a crucial determinant of the way the system

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functions.

3. Increased arrest rates tend to improve court procedures by requiring standardization of case processing.

*4. The absence of centralized records showing previous arrests or convictions for DWI offenses will constitute a major problem in any jurisdiction attempting to reduce drinking-and-driving offenses.

5. Court procedures for drinking-driving cases can be standardized to the point that certain important functions can be handled by personnel other than judges.

6. Legislation alone will not solve all the problems in the judicial systems approach to DWI case processing.

7. The maximum penalties prescribed by statute will rarely be imposed on offenders.

* author: added by O. Hall 2-8-78

PHOENIX ASAP JUDICIAL SYSTEM

A plea of guilty to a lesser charge (such as reckless driving) by a person accused of a DWI offense is one of the most typical outcomes in drunken driving cases. Such pleadings, agreed upon after negotiations between prosecutors and defense attorneys, seldom require a defendant to take some positive action in order to earn a reduced charge. The prosecutor and the defense attorney are the contending parties, basing their arguments on the particular circumstances of the case. The accused person, even if present at the negotiations, is essentially a bystander.

It therefore seemed highly advisable to study an innovative type of plea bargaining known as the "Prosecutor's Alternative to Court Trial" (PACT) that came into existence in Phoenix, Ariz. Initiated late in 1974 after a long period of planning, PACT was devised as an alternative to dealing with DWI offenders simply as lawbreakers. The goal of the program was to encourage offenders to take part in education and rehabilitation programs designed to prevent recidivism. In other words, PACT decriminalized DWI offenses. It can be seen as a logical outgrowth of an effectively functioning Alcohol Safety Action Project (ASAP).

When the Phoenix ASAP got under way in January 1972, its DWI law enforcement measures quickly made an impact on the number of arrests. Thanks largely to ASAP funding for a special motorcycle unit for DWI enforcement and for special training for both city and State police working within the city's boundaries, the DWI arrest total rose from 6,696 in 1971 to 10,401 in 1972.

This substantial increase did not catch the ASAP off guard. Anticipating

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such a rise, the project's officials had allocated funds for three additional prosecutors, three additional judges (later reduced to two), additional support personnel, and two new courtrooms. The ASAP also provided funding for police department employees who conducted presentence investigations of DWI offenders.

These additional resources, however, were not enough to enable the City Court to handle its enlarged case load. Even though more than 7,000 DWI cases were disposed of during the year, the number of pending jury and nonjury DWI trials rose to about 1,700 by year's end. The prospects for disposing of this backlog quickly did not seem good, since the percentage of persons accused of a DWI offense and pleading not guilty (thus compelling a trial) had risen from 27 percent in January to 74 percent in December.

This rise in the number of not-guilty pleas stemmed from a variety of interrelated legislative and judicial actions. For one thing, the Arizona legislature made a minimum sentence of 1 day in prison for a first-time DWI conviction absolutely mandatory, and set even more stringent mandatory penalties for a second or subsequent conviction--60 days in jail and license revocation for 1 year. Judges were only granted discretion regarding fines and license suspensions for first-time offenders and regarding fines alone for second offenders.

Given these mandatory penalties and the increase in the number of arrests, the courts found themselves confronted with many more persons hiring defense attorneys and pleading not guilty to DWI charges. Numerous indigents were included in this group because of a U.S. Supreme Court decision shortly before that time that indigent persons had to be provided with legal counsel in criminal cases where conviction would result in incarceration.

The rapid growth in the court's backlog led to several administrative changes

early in 1973. The required time limit between arrest and arraignment on a DWI charge was reduced from 21 to 10 days, and the court adopted a procedure known as the pretrial disposition conference (PDC). At these conferences defense attorneys and prosecutors negotiated pleas for persons who had pleaded not guilty to DWI charges. Although plea bargaining was supposed to take place only at these conferences, it often continued up to the day of trial.

These changes reduced the backlog significantly. The 1,700 cases pending at the end of 1972 shrank to 972 at the end of 1973. (A decline in the DWI arrest rate from 10,401 to 9,329 also helped to reduce the backlog.)

Nonetheless, neither the ASAP nor most of the City Court judges were enthusiastic about the Phoenix city attorney's plea-bargaining policy. Under this policy prosecutors based their bargaining posture on the strength of their case and the probabilities of conviction. These, in turn, were based largely on the defendant's BAC at time of arrest. The city attorney, who believed that sentencing should be the sole prerogative of the court, refused to make attendance at some type of rehabilitation program a condition for giving defendants the chance to plead guilty to reduced charges. It was understood by all parties that a fine would be the only penalty stemming from a guilty plea to a reduced charge.

On the other hand, however, those who pleaded guilty to a DWI infraction or were found guilty by a judge or jury usually were ordered by the court to attend the DWI school as part of their penalty. During 1972, for example, City Court judges directed more than 5,000 offenders to the school, which had been started in 1966. Funded through offender fees, the school was operated by Arizona State University.

Before enrolling in DWI school, offenders were required to take various

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tests that permitted counsellors to identify potential and actual problem drinkers. The test results of the latter group enabled the staff of a special ASAP-funded diagnostic and referral program at a local medical center to pinpoint "high-risk" offenders, who often were referred to a private treatment program.

As time went on, however, disposition of DWI cases through plea bargaining became more and more common. During the first 3 months of 1974, for example, 79 percent of all concluded cases were resolved through plea bargaining, but a requirement for the offender to attend an education or rehabilitation program was seldom part of the bargain.

It was in these circumstances that PACT was developed by the ASAP's chief prosecutor and the ASAP staff with the cooperation of the chief judge of Phoenix City Court and the city's intergovernmental programs administrator.

The intent of the PACT program was to take advantage of the existing and heavily used plea bargaining process to get as many offenders as possible into some form of rehabilitation. Persons who pleaded not guilty to a DWI charge would be processed through the court system much as they previously had--there would be an arraignment, a pretrial disposition conference (PDC), and a final sentencing. But during the PDC the prosecutor would make attendance at a rehabilitation program a condition for allowing the accused to plead guilty to a reduced charge. This plea would be deferred until final sentencing, which would take place after the offender completed the rehabilitation program. If the offender did not complete the program there would still be time to hold a trial before the 90-day legal time limit between arraignment and trial expired.

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In addition, it was agreed by those who planned the PACT program that all persons charged with a DWI offense after the start of the program would be eligible to participate regardless of their past record. But they would only be allowed to participate once within a 2-year period. In other words, if an offender took part in the PACT program and then was arrested again on a DWI charge within 24 months, he or she would have to stand trial.

There were a number of reasons why the proposed PACT program could be expected to be an improvement over the existing procedure. In effect, it would require DWI violators to take positive action (i.e., attend a rehabilitation program) to earn reduction of the charge. This incentive was not present under traditional plea bargaining.

The program would get as many DWI offenders as possible into an education and rehabilitation program as quickly as possible after their arrest and thus reduce the pressures on the courts--both City Court, which heard DWI cases initially, and Maricopa County Superior Court, which heard the many appeals of DWI cases. The belief was that fewer DWI offenders would contest the charges against them if they could earn a reduced charge, and this would leave the courts free to handle only those DWI cases that were serious enough to require a trial.

In addition, PACT would improve the fairness of DWI court processing by giving a plea bargaining opportunity to all persons accused of DWI offenses, not just those rich enough to hire a lawyer to contest the charges or those poor enough to have a court-appointed defender.

PACT was also expected to have some pleasant economic consequences. Less police overtime would be required, because police would not be needed as often to be witnesses in court cases. There would be a reduction in the need for

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juries, and the standard fine (\$110) imposed in each case would provide some additional revenues. The costs of the program would be supported by the \$35 fee to be imposed in each case. Courtroom facilities would not have to be expanded to handle the potential backlogs of cases that might otherwise be expected.

In April of 1974 the plan for PACT won the endorsement of both the Phoenix City Council and the judges of the City Court. In May of the same year the Phoenix Citizens Alcohol Safety Advisory Committee "wholeheartedly" recommended implementation of the program in its review of the ASAP, and after a preprogram planning period PACT came into existence on August 15, 1974.

City Court judges began urging all persons charged with a DWI offense to plead not guilty before they could enter the PACT program. All persons who did so were then given a brief explanation of the program and instructed to appear at a PDC within 14 to 21 days.

During the time between arraignment and PDC the special ASAP prosecutor reviewed the circumstances of the person's arrest and background to determine what the State's offer would be. PACT offers were usually not made if the BAC test result was extremely high or low--that is, under 0.10 percent BAC--unless there had been an accident.

On the day of the scheduled PDC conference the accused person's first task was to attend a PACT orientation session. Here the accused completed a questionnaire intended to determine the degree of seriousness of his or her drinking problem and then watched a slide-and-sound presentation illustrating the Phoenix drinking-driving problem, potential penalties for conviction, and possible ramifications of a conviction on the convicted person's automobile insurance. An oral explanation of the alternative was then

given--satisfactory participation in a rehabilitation program and payment of a service fee of \$35 in order to gain the opportunity to plead guilty to a lesser charge.

This was followed by the conference, attended by the accused, his or her attorney if any, and the PACT case coordinator. During this conference the coordinator explained again the PACT alternative, which was spelled out on a standard court form. If the defendant accepted the agreement, he or she signed it, as did the defense attorney and the coordinator. (The prosecutor had already signed it prior to the conference.) The defendant was then given written notice of his/her rehabilitation assignment and told where to pay the rehabilitation service fee.

Offenders who refused the PACT offer were given the opportunity to indicate their preference for either a judge or jury trial, and a trial date was set. Plea agreements outside of PACT were usually concluded for persons with low BAC test results, for persons from out of State, and for those with other special circumstances allowing a non-PACT agreement.

The last step in the process was ordinarily an appearance before the judge for final sentencing, following the period of rehabilitation and the case coordinator's determination of whether rehabilitation had been completed satisfactorily. In some cases, however, sentencing was postponed due to a request for further treatment and/or rehabilitation.

The PACT program was controversial, as would be expected of any program that changed a traditional criminal justice process. Both within and outside the criminal justice system there were people who felt strongly for or against the program. There were also many people who saw both advantages and disadvantages in it.

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For instance, one State legislator who chaired the committee responsible for highway safety legislation was unhappy--and believed other members of his committee were unhappy--that through the PACT program the express wish of the legislature that all first DWI offenders serve at least 1 day in jail was being disregarded. This legislator felt that the public desired even stronger criminal penalties to deal with DWI offenders. Another matter of concern to him was that offenders in Phoenix were escaping the mandatory jail sentence while violators everywhere else in the State were compelled to serve it.

At the same time, however, this legislator liked the efficiency of the PACT program in processing offenders, and even went so far as to suggest that he would not oppose legislative repeal of the mandatory 1-day sentence if necessary. (As a matter of fact, Phoenix City Court judges would have been reluctant to see the mandatory sentence disappear after the PACT program got under way, since the threat of a day in jail helped to persuade first offenders to plead not guilty and enter the rehabilitation program.)

The attitude of police officers was, like that of the State legislator, ambivalent. On the one hand, the "gut feeling" of most police officers seemed to be that the PACT program was the wrong way to deal with offenders. They saw it as the typical "coddling" of offenders that they felt had crippled criminal justice, since it permitted offenders to escape the consequences of their actions.

On the other hand, the city's police officers--as well as their counterparts in the State Department of Public Safety--admired the efficiency with which cases were processed under PACT. Some even acknowledged that they had seen some short-term rehabilitation successes. They liked the fact that there had been a step-up in the enforcement effort against DWI offenders,

and that they had to spend less time in court after making DWI arrests. Many, of course, took a "wait-and-see" attitude. Their concern was whether the short-run success of the PACT program would hold up in the long run.

The Phoenix city attorney, who directs the city's prosecutorial activities, was initially dubious about PACT's value. In fact, he refused to allow his regular prosecutors to engage in the PACT plea negotiating process during the first several months of the program, and the necessary tasks were carried out by the three new prosecutors who had been hired with ASAP funds.

For one thing, the city attorney and his assistants did not think that prosecutors should be involved at all in the determination of the sentence. (The three ASAP-funded prosecutors were, of course, involved in sentencing in that the violator agreed to enter the rehabilitation program to be able to plead guilty to a lesser charge.) In taking this view, the city attorney was demonstrating the traditional views that dominated his part of the criminal justice system. To some extent the city attorney's views were simply those of someone who questioned the value of diverting anyone who has broken the law outside the criminal justice system. Then too, there was the fact that the traditional plea negotiating process used by prosecutors before PACT came into existence had been quite successful in dealing with the court backlog.

But early in 1975, apparently recognizing that the PACT program was faring well, the city attorney integrated the work of his office with the program. Administrative control of the prosecution responsibilities within the PACT program was assumed by the city attorney's office, which then began taking steps to make the system work even more efficiently.

Somewhat later in 1975 the city attorney's office became somewhat

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apprehensive about DWI recidivists. By this time substantial numbers of offenders had completed their stay within the PACT system. They had been diagnosed, attended education and rehabilitation programs, pleaded guilty to a lesser charge, paid their fine, and been dismissed by the judge. If the PACT program turned out to be a failure, the police would soon begin arresting many second and third and fourth offenders who would no longer be eligible to enter the PACT process. If these offenders pleaded guilty, they would have to be tried in court, thus increasing the work of the prosecutorial staff.

The reality was otherwise. The number of repeat offenders was not high (e.g., 22 in April) and four-fifths of them pleaded guilty, thereby eliminating the need to try them.

The judges of both the City Court and the Superior Court, with very few exceptions, gave strong support to the PACT program. The chief presiding judge of City Court, in fact, was one of PACT's most ardent supporters. He actively participated in the planning stages of the program, and his advocacy was instrumental in winning support for PACT both within the Phoenix criminal justice system and in the city government generally.

Although both private defense attorneys and public defenders accepted PACT, many were less than enthusiastic. To some extent, the qualms of private attorneys about the program stemmed from its impact on their income. Many felt that given the standardization of the plea negotiating process under PACT, and the attractiveness of the prosecutor's offer, they no longer were needed by clients. Some were advising potential clients that they no longer needed attorneys in DWI cases, and others had reduced their fees.

Some of the criticisms, however, were more objective. One of the public defenders criticized the program's exclusion of recidivists, since many of

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them needed rehabilitation but were not eligible for it. He also contended that problem drinkers could hide their problem by pleading not guilty to a DWI charge and then going to trial instead of choosing plea negotiation.

Several attorneys also contended that indigents often were not admitted to the PACT rehabilitation program since they did not have the money for the \$35 fee. This criticism was not investigated thoroughly, but it is somewhat difficult to understand. Indigents, it would be supposed, would be much more likely to be arrested for public intoxication than for a DWI offense, which would require them to be driving a car (either their own or someone else's).

The attitudes of the DWI offenders who passed through the PACT program seems to have been generally favorable, even though no attempt was made to explore their views in a systematic way. The favorable attitude of judges, for example, was said to reflect the opinions voiced to them by offenders who had completed the program. Presumably too, the rate at which offenders accepted the PACT offer--96.6 percent through 1975--would not have remained that high if the word had gotten around that the program was something to be avoided. A few conversations with rehabilitated offenders themselves seemed to indicate that the advantages they got from the program--lower attorney fees, no jail sentence, no loss of license, no threat of an increase in car insurance--more than made up for whatever annoyance the rehabilitation program may have caused them.

In statistical terms, the impact of the PACT program on DWI case processing was immediate and dramatic. Between the August 15, 1974, starting date and the end of the year, some 2,300 defendants were charged with DWI offenses. Of these, 98 percent pleaded not guilty at arraignment, and 91

percent agreed to take part in the program. On the average, 25 offenders each day agreed to take part in the education and rehabilitation programs, compared to 10 offenders a day prior to PACT.

Of those who signed the PACT agreement through the end of 1975, more than 98 percent successfully completed the required treatment and rehabilitation programs. This high success rate was helped greatly by the discontinuance of the DWI school and the substitution of small-group DWI "prevention workshops."

During its first full year of operation (August 15, 1974, to August 15, 1975) the PACT program processed 6,509 DWI offenders. Due to this substantial number of cases some errors were made and some delays resulted from these errors. Both the ASAP and the Citizens Advisory Committee, however, gave the PACT program high marks for both effectiveness and efficiency, particularly in view of its newness. Efficiency improved even further after March, 1975, when a Rehabilitation-Probation Center was established to house all the screening, diagnosis, referral, and short-term rehabilitation functions of the PACT program under one roof.

It is also worth noting that during PACT's first year the arrest rate of DWI offenders increased 29 percent compared to the previous year. Some had predicted that the PACT program would tend to demoralize the police and result in a reduction in arrests.

By the end of 1975, the first full calendar year of PACT operation, it was clear that the program was a success. During that year virtually 100 percent of those arraigned pleaded not guilty, and 82 percent of them enrolled in education and rehabilitation programs. Thus, the ASAP goal of moving DWI offenders out of the criminal justice system had become a widespread reality.

Furthermore, PACT frequently operated with greater speed than the old system. Under PACT, 93.2 percent of all offenders received final sentencing within 6 months, compared to 74.5 percent under the old procedure. The mean time to final decision for DWI offenders under PACT was 96 days, compared to 134 days under the previous procedure. (On the other hand, the pre-PACT procedure was able to process to completion far more cases within 1 month because there were many more pleas of guilty at arraignment.)

PACT was not quite as successful with regard to the backlog of trials, particularly jury trials, which were of greatest concern. During the pre-PACT months of 1974 the jury trial backlog was reduced to 160, thanks to the old-style plea bargaining. By the end of 1975 the backlog had risen to a still-manageable 193 cases.

On the other hand, the number of pending appeals to the Superior Court from City Court on DWI convictions decreased from 641 in 1973 to 304 in 1974, and then to a mere 9 in 1975. In part, this reduction was due to an administrative change under which City Court cases were transcribed and appeals were allowed only on points of law. (Under the old procedure, there had been no recording of City Court cases and de novo appeals had been permitted.) But the reduction was certainly helped by the PACT bargaining process, which greatly reduced the total number of DWI trials in City Court and thus the number of appeals to the higher court.

To summarize, PACT proved to be a comprehensive plea-bargaining program that provided an expedient, uniform, and fair method of classifying and diverting DWI offenders into short-term rehabilitation programs, with inducement to participate provided by the plea bargain and subsequent avoidance of any incarceration. As a result of PACT's satisfactory performance, it was

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integrated into the standard operating routine of the city's court system and supported with local funds.

The Phoenix study offers support for three hypotheses developed by the study team on the basis of this and other studies.

The first is that legislation alone is not enough to bring about all the changes needed to improve the judicial system's approach to DWI cases. In the case of Phoenix, in fact, PACT was developed to allow offenders to avoid the mandatory jail sentence for first offenders. It could be argued, of course, that without the legislation PACT might not have come into existence, either. But that argument does not invalidate the hypothesis.

The second hypothesis holds that the threat of trial is a crucial determinant of the way the system functions. This was completely true in Phoenix, since PACT was developed primarily to eliminate trials, both at the City Court and appeals court levels. The threat of many more trials, due to the rise in arrests and not guilty pleas, was the primary stimulus for the creation of PACT.

That hypothesis is clearly related to the third, which is that increased arrest rates tend to improve court procedures by requiring standardization of case processing. This cause and effect relationship was demonstrated particularly clearly in Phoenix.

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1.0 INTRODUCTION

1.1 Background

In 1968 the Secretary of the U.S. Department of Transportation, responding to a requirement levied by the Congress, issued a comprehensive report analyzing the role of alcohol in highway crashes. This report concluded that (1) each year the use of alcohol by drivers and pedestrians results in 25,000 deaths (or approximately 50% of the total highway fatality loss) and is involved in at least 800,000 motor vehicle crashes; and (2) two-thirds of the alcohol-related fatalities involve a small portion of the driving population who are either problem drinkers or alcoholics. Thus, the report recognized a significant social problem and identified a class of drivers responsible for much of the problem.¹

In July 1969 the Secretary announced the establishment of the national Alcohol Safety Action Program under the National Highway Traffic Safety Administration (NHTSA) to respond to the problem of alcohol-related highway losses. Thirty-five special Alcohol Safety Action Projects (ASAPs) were authorized to begin operation during 1971 and 1972. Recognizing the ineffectiveness of piecemeal and uncoordinated efforts in the past in combatting drinking drivers, NHTSA adopted a systems approach to the design and operation of the ASAPs:

"The ASAP concept was designed as a systems approach to surround the problem drinker with a set of counter-measures designed to identify him on the road, make decisions regarding rehabilitative procedures, and then take action to put these measures into effect."²

Although the primary target group of the program was the problem drinker, the program also intended to deter social drinkers from driving while impaired through traditional measures, such as increased and publicized drinking-driving enforcement and public information on responsible drinking and driving behavior.

The ASAPs, which were funded at varying levels of approximately \$2 million for a three-year operational period, were locally managed action programs which encompassed diverse geographic areas (e.g., state, city, county, or multi-county area). The objectives set by NHTSA for these ASAPs were:

1. U.S. Department of Transportation, 1968 Alcohol and Highway Safety Report, August 1968.
2. National Highway Traffic Safety Administration, Alcohol Safety Action Projects, Evaluation of Operations-1972, Vol. III (1974), p. 1.

- Demonstrate the feasibility and practicability of a systems approach for dealing with the drinking-driver problem, and further, demonstrate that this approach can save lives.
- Evaluate the individual countermeasures within the limits permitted by the simultaneous application of a number of different countermeasures at the same site.
- Catalyze each state into action to improve its safety program in the area of alcohol safety.

These ambitious objectives were to be achieved through implementation of a comprehensive action plan developed by each ASAP and approved by NHTSA. Each plan for implementing the ASAP systems approach to drinking-driver control included integrated activities in a number of countermeasure areas such as enforcement, prosecution and courts, rehabilitation, public information, licensing and registration, legislation, presentence investigation and probation, and project administration and evaluation.

1.2 General Objective

The overall objective of this study has been to examine five ASAPs which have effected major judicial system changes or which have developed innovative approaches to the adjudication of drinking-driver cases. This required a review of the 26 ASAP sites still in operation at the outset of the study in order to identify those which met the general objective. Five sites which apparently had made a significant impact on their respective court systems were then selected for intensive study. These sites are: (1) Phoenix, Arizona; (2) Puerto Rico; (3) Los Angeles, California; (4) Hennepin County, Minnesota; and (5) Idaho.

Each of the sites selected had particular aspects of change which were of interest. While the general objective was applicable to all five sites, specific study objectives varied with each site. Each site is the subject of a separate report. This present volume, which examines the Phoenix, Arizona ASAP, is one of the five volumes which comprise the case studies. A sixth and final volume provides a general review of problems encountered by the judicial systems in all ASAP sites, and examines their resolution where such resolution occurred.

1.3 Specific Objectives

The primary objective of this case study was to document and assess the efforts of the Phoenix drinking-driver control system to manage an exceptionally large volume of DWI (drinking-driving offense) cases and to provide incentive or inducement for DWI offenders to participate in appropriate alcohol therapy. This community, with the support of its Alcohol Safety Action Project, increased its judicial resources and adopted innovative case processing techniques. The prosecution-based PACT (Prosecution Alternative to Court Trial) program, which was founded on the concept of an earned plea bargain for DWI offenders who participate satisfactorily in a short-term alcohol rehabilitation program, received special attention during the study. The study covers the time period of 1972 through 1975, with special emphasis on the changes occurring in 1974 and their resultant impact on the Phoenix system.

1.4 Scope and Approach

Limited Scope. This is one of five evaluative case studies of selected ASAP sites, with a specific focus and limited scope. The objectives for these studies do not encompass any ultimate evaluation of either the ASAP concept of any particular ASAP site, nor is the focus on the impact of ASAP and its effect on alcohol-related highway fatalities or reduction of abusive drinking and driving. The study team has attempted to examine the experiences of the five selected sites in developing and implementing innovative and effective improvements in the judicial system, and to assess the transferability of such improvements to other jurisdictions. Obviously, any such improvements which are truly effective should be of wide interest, since they need not be limited only to the processing, adjudication, and disposition of drinking-driving cases.

Data Collection. There were three primary methods used to obtain relevant information about the Phoenix drinking-driver control system:

- staff observation and experience;
- ASAP-generated literature; and
- on-site interviews with system personnel.

The Institute for Research in Public Safety, under several training contracts with the National Highway Traffic Safety Administration, conducted at many of the ASAP sites a series of three-day problem-solving seminars for personnel involved in ASAP programs. During the 1973-1975 period, four of these

seminars were presented in cooperation with the Phoenix ASAP: a judicial seminar in 1973; a prosecutors' seminar, a probation-diagnosis-referral seminar, and a second judicial seminar in 1974. A second probation-diagnosis-referral seminar was planned for early 1976. These seminars created an opportunity for members of the study team to analyze the Phoenix system in some depth over an extended period of time. Each seminar was usually preceded by on-site investigation and communication with local personnel. Consequently, at the time of the one-week on-site activity for this case study in March 1975, the study team had accumulated considerable information and insight into the nature and dynamics of the operation of the Phoenix control system.

Each Alcohol Safety Action Project was required to prepare and submit to NHTSA periodic progress reports, culminating each year in an annual report documenting the site's activity and evaluating the major countermeasures. These evaluative reports, called analytic studies, were often prepared by outside consulting agencies and frequently failed to offer full appreciation and understanding of the program being studied. The Phoenix ASAP evaluations were conducted under contract with a nearby state university until 1974, at which time the ASAP created an in-house capability for this activity. Initially, therefore, Phoenix ASAP analytic studies suffered from the presence of data of dubious validity, but the 1974 and 1975 studies reflect assessments based on a more reliable data system. All relevant evaluative reports were received from the ASAP and reviewed by the study team prior to the on-site phase of this study.

No independent collection of quantitative information was contemplated in this study. Consequently, the study team had to rely upon the cooperation and timeliness of the ASAP for any data relevant to the description and analysis of major system changes. Unfortunately, the annual analytic studies pertaining to judicial system operations in 1975 were not available until November 1976. The ASAP staff, however, was generous in providing available documentation and securing additional information not readily available in printed sources.

The major method employed for collecting information was the on-site interview. The two-man study team spent five days in Phoenix in March 1975 conducting interviews with over forty different sources. The team physically observed system operations whenever possible. They accompanied members of the DWI enforcement squad during one evening of patrol, viewed in-court proceedings in the handling of DWI cases, and observed an orientation

session for an individual proceeding through the special diversionary program.

The interview sources were determined after a functional analysis of the Phoenix control system had been conducted to identify all major activities performed in the system. The types of sources identified include the following: (1) state and local legislative bodies; (2) county and city prosecutor (although the county attorney was not interviewed); (3) city and state enforcement agencies; (4) private defense counsel and public defenders; (5) Superior Court presiding judge and City Court personnel (judges, court administrator, probation supervisors); (6) representatives of the city administration: city manager (who was unavailable), inter-governmental programs head, budget and research representative; (7) representatives of major alcohol treatment programs; (8) a state motor vehicle department administrator; (9) the state highway safety coordinator; and (10) a large number of ASAP staff and individuals closely associated with that operation (including the chairman of the Citizens Alcohol Safety Advisory Committee).

A general open-ended interview guide, oriented to the specific objectives of the case study, was used in all interviews. This guide was designed to allow the interviewer to learn what happened at the site, why an event or change occurred, what impact it had, and what the interviewee felt -- his opinions or attitudes about an event, program, law, or person.

The on-site data collection activity conducted by the study team was fairly successful. Most of the intended interview targets were interviewed, though the desired information or insight was not always obtained. The ASAP provided scheduling assistance by identifying and contacting all interviewees and by arranging the interview locations and times. The value of this support in conducting on-site data collection was considerable.

Study Limitations. Due to the funding and time constraints imposed upon each of the five case studies, it was determined by the project staff that the most efficient and valuable means for securing information about the nature and explanation of system changes was to focus on key individuals who either functioned in or were knowledgeable observers of the drinking-driver control system under study. Since the individuals who were most aware of the system changes, of the nominal and actual reasons for their adoption or rejection, and of their consequences were not necessarily typical of the groups they belonged to or represented, it was difficult to generalize about opinions or attitudes of particular classes of actors (e.g., defense attorneys,

Superior Court judges). The study policy, therefore, was to emphasize the description of system changes and to deemphasize the need for scientific certainty in assessing attitudes. Much of the attitudinal information represents the impressions of the study team and the impressions of the interviewees as to attitudes of other individuals or groups. Attitudinal information should therefore be viewed cautiously, but should not be disregarded.

Another limitation of the study was the reliance on the ASAP for most of the quantitative data used. While the Phoenix ASAP management information and evaluation system was improved during the course of the project, data from the initial project years are of uncertain reliability in some instances. The most recent evaluation reports, however, are supported with greater confidence by the ASAP and appear to be reliable. Thus, the ASAP's evaluative data on its DWI diversion program are given credence in this study.

One additional potential major limitation which must be addressed is the possible bias of the study team because of its close, continuing relationship with the ASAP program in Phoenix. The role of the Institute for Research in Public Safety in providing seminars for the Phoenix ASAP was to assist the project in resolving problems and in securing commitments to cooperate with ASAP policies. It is difficult to conduct a disinterested analysis of a program when there is personal involvement with the project staff over a period of time. Nevertheless, it is hoped that this familiarity merely facilitated the investigation and description of the program and did not preclude a balanced, accurate treatment of the subject.

2.0 PHOENIX ALCOHOL SAFETY ACTION PROJECT

In 1971 the City of Phoenix concluded an agreement with the National Highway Traffic Safety Administration for Phoenix to become the site of one of the thirty-five Alcohol Safety Action Projects. This federally-funded alcohol countermeasures program was to become a major force and influence in the improvement of the Phoenix criminal justice system and the development of alcohol education and treatment resources in the community.

In order to provide perspective and background on the community in which this special program was to operate, a brief description of relevant characteristics of Phoenix, Arizona is presented. After the community description, the objectives, countermeasures, and resources of the Phoenix Alcohol Safety Action Project are summarized.

2.1 Community Description

Phoenix, the capital of Arizona, is a sprawling metropolitan area located in the south central area of the state. Situated in a large, flat valley with scenic mountains rising to the north and south, the city has a pleasant, warm, and dry climate, a feature which attracts large numbers of tourists and retirees each year. There were approximately 670,000 Phoenicians in 1975. There is a sizable Mexican-American population (14%), while 5% are Black and 1% Indian. The median age is 27.5 years.

The city (as well as the state) is generally conservative politically, and only in recent years has there been any emphasis on social service programs. Development of treatment resources for alcohol abusers has progressed slowly, but has gained impetus in recent years. The state does have progressive legislation for alcohol service delivery, having decriminalized public intoxication in 1972 (effective in 1974).

There are over 2,600 miles of roads within the 273.4 square-mile area of the city. There are only 23 miles of interstate highway within the corporate limits, with 434 miles of major arterial streets and 240 miles of collector streets. The primary mode of transportation is the automobile. There is a mass transit system in existence, but it is largely inadequate to service the transportation needs of the Phoenix area. There are an exceptional number of registered vehicles in Phoenix and the surrounding area (with 452,000 in Phoenix alone in 1972). A large number of driving-age individuals (402,000 in 1975), who comprise 68% of the population, are licensed drivers. The automobile assumes an important and necessary role in Phoenix.

Prior to the beginning of the Alcohol Safety Action Project, Phoenix had experienced a declining motor vehicle fatality rate (96 fatalities in 1969, 93 in 1970, and 84 in 1971). During these three years, however, the incidence of alcohol involvement in fatal crashes remained fairly constant at approximately 41%. It was this high alcohol involvement rate in not only fatal motor vehicle crashes, but also in personal injury and property damage accidents, that was considered unacceptable and a target for reduction through an alcohol countermeasures program---the Alcohol Safety Action Project.

2.2 Overview of the Phoenix ASAP

In 1971 the Phoenix city administration, in cooperation with the state highway safety coordinator, determined that a special drinking-driver countermeasures program would enhance the highway safety effort in Phoenix. The city subsequently developed and submitted in May 1971 a proposal to the U.S. Department of Transportation for approval of the city as one of the thirty-five federally-funded Alcohol Safety Action Projects. This proposal was accepted, and a contract was concluded obligating \$2.2 million in federal funds to support the project during the three and one-half year project term. The six-month planning and preparation phase commenced July 1, 1971, with full operations planned to begin January 5, 1972.

The history of the ASAP during the three-year operational period of 1972-1974, including significant events and outcomes, is presented in Section 4.0 of this report. In late 1974 the city, after submitting a request to NHTSA for continuation funding, received approval for an additional two years of operations and a final six-month period for final evaluation and reporting. Significant events and outcomes during the first additional year (and fourth operational year) are also described in Section 4.0.

During the six-year existence of the ASAP, \$5.1 million, of which \$3.2 million represented federal funding support, were expended for this action program. By 1974 alternative funding sources had been identified and used to support successful elements of the program, with a trend to decreasing reliance on federal funds and increasing emphasis on city-appropriated funds and user fees required of DWI offenders referred to short-term rehabilitation programs. If local willingness to assume the costs of the program is a valid measure of program success, the ASAP was extremely successful in demonstrating the value of its countermeasure activities to the city administration and the criminal justice system.

The guiding objectives established for the Phoenix Alcohol Safety Action Project in 1971 were:

- to achieve significant reduction in alcohol-related crashes resulting in fatalities, injuries, and property damage; and
- to generate public support and stimulate state and community programs.

Using the systems approach to drinking-driver control, developers of the ASAP designed a coordinated and integrated program of multiple countermeasures, each directed to a major need of the control system. This broadly based program, with the ASAP functioning as a funder, coordinator, and stimulator, involved a diverse range of criminal justice, public health, and community resource agencies cooperating in a common goal to reduce the incidence of abusive drinking-driver behavior. There were eight major countermeasure areas comprising the ASAP action program.

Enforcement. The drinking-driver detection and apprehension capability was improved by ASAP through the funding of additional personnel, equipment, and training. A special eleven-man DWI enforcement motorcycle patrol was created in the Phoenix Police Department. This dedicated patrol effort proved to be highly successful in increasing the DWI apprehension rate. Special enforcement training for police personnel operating in the city, including Department of Public Safety patrolmen, was offered.

Judicial. The original effort in the prosecutor-judicial areas involved a significant increase in resources. Funding was provided for three prosecutors, three (later reduced to two) additional judges, support personnel, and two new courtroom facilities dedicated to the processing of the planned increase in DWI cases. The ASAP also funded an innovative volunteer probation partner program, the purpose of which was to identify, train, and assign volunteers to work with DWI offenders. A simple presentence investigation capability was created by funding police department employees who were assigned to collect background records information on DWI offenders.

In August 1974 the Prosecution Alternative to Court Trial (PACT) program was begun. This formalized plea-bargaining program allowed DWI offenders the opportunity to earn a reduction in the DWI charge upon successful completion of short-term rehabilitation. This program was fostered by the ASAP staff; however, much of the funding for the PACT activities was derived from sources other than federal funds, such as city appropriations and client fees.

Rehabilitation. Prior to July 1974 the major rehabilitative activity in the Phoenix drinking-driver control system was the Phoenix DWI School, sponsored by the City Court and operated by Arizona State University. The School itself was not an ASAP-funded activity, although special alcoholism counselors working in conjunction with the school were financed by ASAP. Diagnosis and referral of serious problem drinkers assigned to the school were performed by alcoholism staff members of a local general hospital under contract with the ASAP. Referrals were made by alcoholism counselors with the school or by the hospital diagnosticians to other alcohol treatment and community service resources in the Phoenix area.

In July 1974, with ASAP stimulation, the first of a range of new short-term rehabilitation programs, called "alcohol awareness programs," began operation. These fee-supported small group workshops were provided by a local nonprofit organization with previous experience in providing alcoholism services in the community. The original workshops, designed for social drinkers, were supplemented in early 1975 with two additional short-term small group modalities for problem drinkers. Finally, also in early 1975, all DWI screening, diagnosis, referral, and short-term rehabilitation activities were combined and operated through the newly created Rehabilitation-Probation Center.

The PACT program personnel responsible for intake, initial screening, and referral of DWI offenders were ASAP-financed, employed under the City Court's Rehabilitation-Probation Center, and ultimately supervised by the City Prosecutor.

ASAP also provided funding support for a special crisis intervention program to provide emergency assistance via telephone for urgent alcohol-related problems and transportation assistance for those unable to drive due to drinking.

Legislative and Regulatory. The ASAP offered its staff expertise in determining legislative needs, recommending approaches to drinking-driving control law, and securing support for the enactment of legislation.

Licensing and Registration. The ASAP had no special countermeasure activities in this area, as many ASAPs did, but did cooperate with the Department of Motor Vehicles. Records-check personnel funded by ASAP were permitted to search the DMV driver files for information.

Public Information and Education. The ASAP maintained an active public educational effort with drinking-driving prevention and control information disseminated through all media. The project also coordinated a speaker's bureau. An outside consultant was employed to assist in the research and planning of the public information program.

Evaluation. A major portion of the project funding was dedicated to evaluation to determine the impact of the project in meeting its objectives and the efficacy of the various countermeasures. The evaluation effort originally was contracted to Arizona State University; however, in November 1974 an in-house evaluation unit was created to perform project evaluation tasks.

Project Administration. The administration of the project, including administrative, fiscal, and staff services, was conducted throughout the life of the project by a special project management team operating under the City Manager through his Intergovernmental Programs Administrator.

3.0 PHOENIX DRINKING-DRIVER CONTROL SYSTEM

In Phoenix the societal means for control of abusive drinking-driving behavior traditionally has been the local criminal justice system. The state legislature has established a set of laws proscribing serious drinking-driving acts and authorizing local criminal justice personnel to enforce those laws. The Phoenix criminal justice agencies perform the essential functions of enforcement, prosecution, adjudication, and sanction, including the application of appropriate correctional and treatment dispositions. In seeking effective correctional or treatment options, the courts have employed special alcohol education as a major rehabilitative tool since 1966. With the inception of the ASAP program in 1972, criminal justice system resources were increased for an intensified drinking-driver control effort. Using the criminal justice system as a casefinding and referral source, the ASAP succeeded in linking that system with alcohol treatment, mental health, and community service resources to provide educational, treatment, and rehabilitative services to drinking-driving offenders. Providing coordination, evaluation, and funding support for the facilitation and linkage of the cooperative intersystem activities was a major function of the Alcohol Safety Action Project. The important agencies operating in the Phoenix drinking-driver control system and the legal framework for the system are described briefly.

3.1 System Agencies

Legislative Agencies. All drinking-driving legislation adopted for the Phoenix system is general, statewide statutory law enacted by the Arizona state legislature. The ordinance-making body for the city, the City Council, does not enact additional or duplicate drinking-driving regulations as do some charter cities in other states.

Enforcement Agencies. The major traffic law enforcement agency in Phoenix is the Phoenix City Police Department. Within the Traffic Bureau of this agency operate both the regular traffic patrol and a special ASAP-initiated motorcycle unit. The Arizona Department of Public Safety, through its Highway Patrol, provides traffic enforcement coverage on interstate highways within the city of Phoenix.

Prosecution Agencies. Prosecution services in the twelve divisions of the Phoenix City Court are provided by the Criminal Division of the City Law Department, which is administered by the City Attorney, the chief legal adviser of the city. An Assistant City Attorney appointed as City Prosecutor is the administrative head of the Criminal Division.

Other prosecutive personnel on the City Prosecutor's staff are appointed as Assistant City Attorneys. In addition to prosecution of state drinking-driving laws (and other misdemeanors and ordinances) in City Court, these prosecutors handle the processing of City Court cases appealed to and tried in the Maricopa County Superior Court.

The office of the Maricopa County Attorney provides prosecution services in the Superior Court. Serious drinking-driving-related offenses, such as the "high misdemeanor" of DWI while license revoked, are processed in this general jurisdiction court.

Courts. The twelve-division City Court has jurisdiction, concurrently with Justices of the Peace, to hear misdemeanor drinking-driving violations. This Court has jurisdiction in cases involving state misdemeanors, city ordinances, and civil cases within the authority conferred by the city charter. The Court is headed by a Chief Presiding Judge. All judges are appointed by the City Council for four-year terms, while a judge designated as Chief Presiding Judge serves a one-year term in that capacity, subject to reappointment. Parttime judges staff a custodial arraignment or "jail" court. A Court Administrator and his staff are responsible for providing case processing support services for the City Court. Until July 1, 1975 the City Court was assisted by a small three-man probation staff, one of whom supervised the volunteers-in-probation program for DWI offenders. On July 1, 1975 a Rehabilitation-Probation Center, organized earlier in the year by the ASAP, became a part of the City Court. The three elements comprising this Center were Pact Orientation (the intake, screening, and referral component of the earned plea-bargain program for DWI offenders, begun in August 1974), DWI short-term rehabilitation activities, and probation (composed of the DWI volunteer partner program and a new criminal misdemeanor probation activity).

The Maricopa County Superior Court is the court of general jurisdiction for the county (including Phoenix). In 1975 it was comprised of 28 divisions (18 civil and 10 criminal) with 32 judges headed by a Chief Presiding Judge. Superior Court is the felony-level court for the county and, until July 1, 1975, held trials de novo in cases appealed from City Court. The Court is supported by a Court Administrator and staff and a 65-member Probation Department.

Defense Services. Until 1972 misdemeanor defense services in City Court were provided solely by the defense bar of Phoenix. At that time, in response to a U.S. Supreme Court decision requiring appointed counsel for indigents in cases where incarceration was the outcome, the city contracted

with the Maricopa County Public Defender to establish a Department of Legal Services to provide indigent defense services for misdemeanor cases in City Court.

Driver Licensing Control Agency. The Arizona Department of Motor Vehicles is responsible for post-licensing driver control. Through a program of license withdrawal or restriction, utilizing an administratively adopted "point system," the agency has an important role in drinking-driver control. The "implied consent" law is enforced by the DMV by imposition of license suspension for DWI offenders who refuse an enforcement officer's request to submit to a chemical test for intoxication.

Treatment and Rehabilitation Agencies. There were a considerable number of alcohol education, treatment, and referral agencies which operated during the course of the ASAP program in Phoenix in 1972-1975 period. Arizona State University sponsored the DWI School, which achieved a national reputation since its inception in 1966. In July 1974, after discontinuance of the DWI School, a series of short-term rehabilitation modalities began operation through sponsorship by the ASAP. These services and other preexisting programs (including DWI Probation) were combined under the ASAP-created Rehabilitation-Probation Center.

A number of community agencies in the Phoenix area provide services to problem drinkers. These include the county general hospital, state mental hospital, private hospitals, mental health clinics, an alcoholism clinic, halfway houses, and other therapeutic and counseling programs. The major diagnostic, treatment, and referral agency for problem drinking DWI offenders until early 1975 was a private general hospital.

State Highway Safety Office. The office of the state highway safety coordinator was involved in the support of the Phoenix ASAP; in fact, this office was instrumental in the development of the ASAP. The coordinator dispenses federal highway-safety funds to state and local agencies to upgrade their traffic safety programs, including drinking-driver control effects.

Phoenix City Administration. The agencies of Phoenix city government with a role in the Phoenix drinking-driver control system are the City Council, the City Manager, the Intergovernmental Programs Administration, Budget and Research Department, Alcohol Safety Action Project, and the Citizens Alcohol Safety Advisory Committee.

City Council. The City of Phoenix has a council-manager form of government. This council is the legislative, appropriating, and policy-making body. It appoints the City Manager, as well as the City Judges and numerous boards, commissions, and advisory committees, such as the Citizens Alcohol Safety Advisory Committee. The seven members of the nonpartisan City Council (headed by a Mayor) are the only elected officers in Phoenix city government and serve only two-year terms.

City Manager. The City Manager is the chief administrative officer of the city and is responsible to the City Council for the execution of his duties, which include the administration of all city programs and operations, the appointment of city employees (excluding City Court Judges), the recommendation to the City Council of a Chief Presiding Judge for the City Court, and the control of fiscal matters. The City Manager and staff assist the City Council in the development of city policy, including preparation and implementation of the annual budget.

Intergovernmental Programs Administration. The Intergovernmental Programs Administration, headed by an Administrator, is responsible for coordination of federal-aid programs, criminal justice planning, intergovernmental cooperation, and liaison with the City Council and state legislature. The Administrator was the immediate supervisor of the Phoenix ASAP management staff. Demonstration programs, such as the ASAP, operate under the control and direction of this office. If these demonstration activities are successful and it is feasible to continue them with local funds, the programs are integrated into the operations of appropriate line agencies of city government.

Budget and Research Department. The Budget and Research Department is assigned the responsibility for budget preparation and administration. It has the capability to conduct methods and procedures, systems, and research studies for the purpose of determining funding needs and promoting efficiencies in the operating agencies of city government. This department is influential in determining the funding city programs will receive.

Phoenix Alcohol Safety Action Project. Administration of the Phoenix ASAP was the responsibility of a project management staff, headed by the ASAP Project Director. The size of the staff fluctuated throughout the life of the project, but consisted of a Director, who was the most highly placed woman in the classified city civil service system, an Assistant Director, Public Information Specialist, Evaluation Specialist, Rehabilitation Specialist, and clerical staff. The management staff was responsible for overall project administration, fiscal control, interagency coordination, countermeasure planning, and project evaluation and reporting.

Citizens Alcohol Safety Advisory Committee. The 18-member citizen committee was appointed by the City Council to review the operations of the ASAP and to report recommendations to the City Council on the continuation of ASAP activities under local funding. Citizen committees are used frequently in Arizona to obtain citizen inputs and recommendations on important community issues.

3.2 Legal Environment

The legal milieu in which the drinking-driver control system operates in Phoenix is typical of other jurisdictions in the United States. Arizona has had, since 1935, a statute proscribing the driving of a motor vehicle while under the influence of intoxicants (DWI). An evidentiary presumption of being "under the influence" if the driver has a blood alcohol concentration (BAC) of .15% or more was established in 1939. No major substantial changes in these basic drinking-driving laws occurred until 1969, when the state passed an "implied consent" law, which authorized driver's license suspension for refusal to submit to a chemical test to determine BAC.

In 1972 the state legislature enacted several significant amendments which resulted in (1) the reduction of the presumptive evidence level from .15% to .10% BAC, to bring the state into conformity with nationally recommended standards, and (2) the increase of the penalties for conviction of a DWI offense (for example, a nonsuspendable imprisonment period of at least one day was mandated). This 1972 legislative session also resulted in the reduction of the minimum drinking age from 21 to 19 and the decriminalization of the offense of public intoxication (effective January 1, 1974).

The key provision of these drinking-driver control laws are presented in the following subsections.

Basic Offense: Driving Under the Influence (DWI). The basic drinking-driver control law in operation in Arizona provides:

"It is unlawful and punishable . . . for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state."³

The term "driving under the influence" has been defined by Arizona courts to mean that a person's control of a motor vehicle has been affected "to the slightest degree" by his consumption of an intoxicant.⁴

3. Ariz. Rev. Stat. § 28-692A.

4. Davis v. Waters, 103 Ariz. 8, 436 P.2d 906 (1968);
Noland v. Wootan, 102 Ariz. 192, 427 P.2d 142 (1967).

(1) First Conviction. Punishment for first conviction for DWI is imprisonment for not less than one day nor more than six months and, in the discretion of the court, by a fine of not less than one-hundred nor more than three-hundred dollars, or both. The court further has the discretion of "suspending the driving privileges of . . . [the convicted] person for a period not to exceed six months." The penalty section continues with an express provision that the one-day mandatory jail sentence cannot be suspended:

"No judge may grant probation to or suspend the imposition of a jail sentence."

The judge is, however, granted authority to exercise certain nonpunitive sentencing options:

"If in the court's opinion the offender has the problem of habitual abuse of alcohol or drugs, the court may require the person to obtain treatment under its supervision; however, in no case shall an offender be excused from spending one day in jail."

The legislative intent for all persons convicted of first-offense DWI to serve one day in jail is clear and certain.⁵

(2) Second or Subsequent Conviction. A person convicted for a second or subsequent DWI violation within a twenty-four-month period must be punished by imprisonment for not less than sixty days nor more than six months and, in the discretion of the court, by a fine of three-hundred dollars. In addition, the judge must require the surrender of the driver's license for forwarding to the Department of Motor Vehicles, which must then revoke the DWI offender's driving privilege for at least one year. The judge cannot suspend the 60-day minimum jail sentence or fail to require surrender of the driver's license. He can, however, utilize supervised treatment for habitual alcohol or drug abusers in addition to imprisonment.⁶

(3) First Conviction For Dwi with a Prior Reckless Driving. If a person has been convicted of DWI and has a prior conviction for one of a number of other charges, e.g.,

5. Ariz. Rev. Stat. § 28-692.01A.

6. Ariz. Rev. Stat. § 28-692.01B.

reckless driving, within a twenty-four-month period, he must be punished by imprisonment for not less than twenty days nor more than six months and, in the discretion of the court, by a fine of not less than one-hundred-fifty nor more than three-hundred dollars. The same mandatory driver's license revocation and nonsuspendable jail term features of the penalty provision for second and subsequent DWI offenders apply in this case also.⁷

(4) DWI While License Suspended, Revoked, or Refused. In 1972 a drinking-driving-related felony was established. A person convicted of commission of the offense of DWI while his driver's license is suspended, revoked, or refused will be punished by incarceration in the state prison from one to five years or in the county jail for no more than one year, by a fine of not more than \$1,000, or by both fine and imprisonment. In August 1975 this "felony DWI" was reduced to what is termed a "high misdemeanor."⁸

"Implied Consent" Law. The Arizona implied consent statute, enacted in 1969, is typical of similar legislation in other states, although it possesses certain unique features. This law, which was amended in 1973 in anticipation of a Federal District Court decision ruling the then-existing law unconstitutional, now provides:

"Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent . . . to a chemical test or tests of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor."

Each law enforcement agency is authorized to designate which chemical test will be administered by its officers; however, the law requires a breath test to be used unless "circumstances" preclude its use.⁹

Refusal to submit to a chemical test for alcohol after proper request by an enforcement officer will result in a mandatory six-month driver's license suspension.¹⁰ Until March 1975 the law provided that if the person presented to the Department of Motor Vehicles proof that he had pleaded

7. Ariz. Rev. Stat. § 28-692.01B.

8. Ariz. Rev. Stat. § 28-692.02.

9. Ariz. Rev. Stat. § 28-692A.

10. Ariz. Rev. Stat. § 28-691D.

guilty to the DWI charge related to the implied consent refusal, the license suspension for the refusal would have to be rescinded or not invoked.¹¹ This provision of the Arizona law presented a dilemma for drivers who had refused the chemical test and subsequently were given the opportunity by the prosecutor to plead guilty to a non-DWI charge (not involving the mandatory one-day jail sentence); jail-time was avoided, but not the implied consent refusal suspension, because the plea of guilty was not entered for the original DWI charge. In March 1975 the United States District Court ruled that this feature of the implied consent law imposed an impermissible burden on the rights guaranteed an accused DWI offender by the Fifth and Sixth Amendments.

Driving Licensing Action. The Department of Motor Vehicles is authorized to restrict or withdraw the driving privilege of persons convicted of DWI. The Department may suspend the driver's license for not more than one year or require successful completion of an educational program to improve the safety and habits of (1) those persons convicted of DWI for the first time in twenty-four months, and (2) persons who have refused to submit to an "implied consent" test for alcohol.¹² If the conviction is for a second or subsequent DWI within twenty-four months, the Department must revoke the driving privilege, and relicensing is not permitted until the expiration of one year.¹³

The Department also exercises control of drinking-drivers through its general driver-improvement program activities for frequent traffic law violators identified under a publicized administrative "point system."¹⁴ In addition, the Department may not issue a driver's license to any person it finds to be an "habitual drunkard."¹⁵

11. Ariz. Rev. Stat. § 28-691H.

12. Ariz. Rev. Stat. § 28-446, 28-448A.

13. Ariz. Rev. Stat. § 28-445, 28-448B.

14. Ariz. Rev. Stat. § 28-446.

15. Ariz. Rev. Stat. § 28-413.

4.0 HISTORY OF THE PHOENIX ASAP

The history of the Phoenix ASAP, as well as that of any other ASAP or social action program, is a history of continuing change. Despite the most realistic and enlightened planning, the ASAPs were required to be flexible, adjusting and reacting to changes which they themselves created or which were generated by external agencies and events. In order to appreciate the impact of change within or upon any particular facet of the Phoenix drinking-driver control system, particularly the prosecutorial-judicial component, it is necessary to understand the historical evolution of events and the social context and milieu in which the change occurred. To provide that perspective, a brief history of the Phoenix drinking-driver control efforts, particularly the role of the ASAP, is presented for the four-year period of 1972-1975.

4.1 First-Year Activities - 1972

Processing Procedures. The processing sequence in effect during 1972 for handling the arrest and disposition of DWI offenders is described according to the major functions performed by the Phoenix drinking-driver control system.

Arrest. The procedure for detection, apprehension, testing, and release or detention remained much the same during the four-year period. The patrol officer, upon determining that there exists probable cause that a violation has been committed (usually a nonalcohol traffic violation), will stop the driver. If preliminary observation and communication with the driver leads him to believe the driver is "under the influence," the officer will require the performance of a number of simple agility tests to determine impairment. If there is sufficient evidence of DWI, the driver is arrested and requested to take a chemical test to determine his blood alcohol concentration (BAC). This test, usually a breath analysis conducted at a police field station, is administered by the arresting officer. If the test is refused, an implied consent warning (to the effect that his driver's license will be suspended if he fails to cooperate) is given. After fingerprinting, photographing, and preparation of the necessary documents (citation, alcohol influence form, accident report), a release decision is made. If there are no arrest warrants pending against him and he has a means of transportation to get home (taxi, responsible party), he will be released upon his own recognition. If he is not eligible, he is booked into the county jail pending his appearance in court the next day.

Arraignment. If the individual has been released on his own recognizance, he is required to appear in City Court for arraignment within twenty-one days of the arrest date (subsequently changed to four to ten days after arrest). Arraignment for those in jail is conducted within twenty-four hours after arrest in a special custodial court at the jail. The defendants are advised of their rights and given an opportunity to secure counsel. The purpose of the arraignment is to ascertain the plea of the defendant. If the defendant pleads guilty, sentencing occurs immediately. If a plea of not guilty is entered, a date for a jury or non-jury trial (whichever is requested by the defendant) is scheduled.

Adjudication. Theoretically, on the trial date the defendant appears and a trial is conducted. Sentencing occurs immediately if a defendant is found guilty. Actually, this procedure occurs infrequently. An alternative procedure is for the defense attorney and the prosecutor to negotiate a plea bargain, often on the day of trial. Frequently, due to overscheduling of trials or because of attorney request, the trial may be continued to a later date.

Sentencing. There are three main sentencing options open to the sentencing judge. He can pronounce immediate sentence and impose traditional sanctions, usually a fine of \$180, but sometimes jail time or recommended license suspension. He can place the offender on probation for six months and refer him to the volunteer probation partner program to be matched with an appropriate partner. More commonly, the sentence will be continued for a period of time (70-80 days) to allow the offender to participate in the court-sponsored DWI School. A disposition date is scheduled for reappearance in court and final sentencing. At that time, the offender's criminal and driving records and reports of compliance with the DWI school program and any other rehabilitative programs suggested are reviewed, and final sentencing conducted. The offender usually receives a reduction of his fine for successful completion of these "presentencing" requirements. Limited additional continuations of sentence can be provided for offenders requiring additional rehabilitative services for a drinking problem.

Screening and Referral. Prior to enrollment in the DWI School, the offender is required to take a battery of tests which serve as a pretest for the school, and which also provide demographic and diagnostic data used to identify individuals with drinking problems for subsequent diagnosis, referral, and treatment. The diagnostic results are used by alcoholism counselors to identify emerging problem drinkers,

and by the staff of a special ASAP-funded diagnostic and referral program at a local medical center to identify "high-risk" problem drinkers. These high-risk offenders are subjected to further diagnostic tests and, if treatment is indicated, are referred to an alcohol treatment program. Offenders selected for additional diagnosis at the medical center program begin that activity after completion of the DWI School.

Short-Term Rehabilitation. The major short-term rehabilitation program is the DWI School. Offenders are randomly assigned to one of four groups (four session, one session, literature only, or control group). The orientation is didactic, with large groups of offenders provided a lecture and film program. The DWI School, provided by Arizona State University and funded through offender fees, enjoys a national reputation as a model program. The Chief Presiding Judge of the City Court (during 1972) is credited with its founding in 1966.

Appeals. Convictions for DWI in City Court may be appealed to the Maricopa County Superior Court. Since the City Court is not a court of record, appeals to Superior Court result in a trial de novo, which means the case is retried as if there had been no prior trial or action in City Court. Defense attorneys also use a procedure called "submit and appeal" by which the City Court proceeding is eliminated and the case is transferred to Superior Court. City Court cases are not accorded high priority in Superior Court. Overscheduling of these cases and considerable day-of-trial plea bargaining occur in the appeals process also.

Significant Events and Outcomes. The first six months of the project was the gear-up phase, involving training of police personnel, purchase of necessary equipment and supplies, construction of facilities (i.e., courtrooms), and employment of additional personnel (e.g., judges and prosecutors). Countermeasures were activated at varying times during the start-up period. The ASAP management staff began to establish itself as a partner with the preexisting misdemeanor justice and alcohol education and treatment agencies of the local drinking-driver control system. Periodic meetings with key personnel were held to anticipate and resolve problems, to coordinate activities, and to exchange information.

There were several significant events and outcomes during the first year. First was the staggering increase in DWI arrests. The DWI enforcement effort increased significantly over the prior year, totalling 10,401 in 1972 as compared

to 6,696 arrests for 1971. Despite the increase in system resources provided by the ASAP, the prosecutorial-judicial component of the system did not adjust satisfactorily to the weight of increased DWI case input.

In addition to the impact created by the increase in arrest rate, there were several major legislative changes in the drinking-driving area. Effective August 13, 1972, the BAC level establishing presumptive evidence of being "under the influence" was reduced from .15% to .10%; a non-suspendable one-day minimum jail sentence for the first DWI conviction within twenty-four months was mandated, as was a minimum sixty-day jail term for those convicted of a second or subsequent DWI within twenty-four months; and a conviction for DWI while a person's driver's license was suspended, revoked, or refused became punishable as a felony.

The impact of the U.S. Supreme Court decision in Argersinger v. Hamlin was felt in the Phoenix lower court system in 1972. This landmark case required an opportunity for legal representation for indigents in criminal cases in which incarceration for conviction was an outcome. This requirement, together with the minimum one-day jail term for a DWI conviction and the huge influx of DWI cases, placed a considerable and immediate resource demand on the Phoenix system. The Argersinger-initiated problem was resolved when the City of Phoenix contracted with the Maricopa County Public Defender to provide indigent defense services in City Court; however, the repercussion of the Argersinger case, with the resulting presence of both private and government-provided legal counsel in virtually all DWI cases, was again felt when the not-guilty plea and jury trial demand rate rose significantly, particularly after the mandatory one-day jail term became effective. Cases involving legal counsel were virtually certain to result in a jury trial being requested.

As the year progressed, certain notable changes occurred in the pattern of DWI case activity. Overall, there was a conviction rate of 71%; however, the not-guilty plea rate increased from 27% in January to 74% at the end of the year. Over 7,000 cases were concluded with a final disposition of some sort in 1972, but the backlog of both jury and non-jury trials pending at the end of the year had risen to approximately 1,700. Plea bargaining was being performed (as can be inferred from the 28% dismissal rate for DWI charges).

During the year it was estimated that over 5,000 offenders were directed by the City Court to attend the DWI School. Seventy-three percent did attend and satisfactorily complete

the course. The court fully endorsed the DWI School concept and utilized the school as the primary disposition in DWI cases. The classes, however, became overcrowded with the increased referrals, and the procedures for exchange of records and reports proved inadequate. The extensive pre- and post-DWI School testing being done appeared increasingly unnecessary and steps were begun to streamline the process. Other countermeasures functioned adequately after the start-up phase was completed. The volunteer probation program began training volunteers and accepting probationers, the diagnosis-referral activity provided under contract to the ASAP accepted and assisted a steadily increasing DWI clientele, and pre-sentence record checks were being performed routinely.

Despite inherent limitations on its power to conform the control system to its expectations, the ASAP continued actively to promote a systems approach to operation of disparate agencies cooperating to achieve a common goal. During the early months of ASAP, according to a prosecution source, it was the policy of the City Prosecutor's office to encourage drinking drivers to attend DWI School as a condition of almost any plea bargaining. Later, as the DWI arrest rate increased and the case backlog rose, widespread plea bargaining occurred without regular referral to the DWI School.

The administration of the City Prosecutor's office was never fully committed to the approach of using prosecutor and judicial discretion to facilitate entry of drinking drivers into alcohol education and treatment programs as a means to prevent recurrent excessive drinking-driving behavior. A request by the ASAP Director to the City Attorney to have the city prosecutors consider regular referral into education or treatment as an element of its DWI plea-bargaining policy was declined.

4.2 Second-Year Activities - 1973

Processing Procedures. The processing procedure in operation in 1973 was similar to the 1972 procedure; however, certain major modifications were made. First, the outside time limit for appearance at arraignment was reduced from twenty-one to ten days. Second, in April 1973 the City Court, in an attempt to manage and reduce its caseload and in anticipation of a "speedy trial" rule to be promulgated by the state Supreme Court, adopted a new pretrial procedure. Defendants in major traffic cases who pleaded not guilty at arraignment were scheduled for an appearance at a "Pre-Trial Disposition Conference" (PDC). The purpose of the PDC was to provide an opportunity for the prosecutor and the defendant, or more accurately his counsel, to meet and confer about the possibility of resolving the case by plea. If a plea bargain was concluded, the judge accepted the plea at that time and sentenced the offender. If a plea bargain

could not be arranged, only then would the case be set for trial. The PDC procedure was formalized through adoption of a City Court rule approved by the state Supreme Court. In theory no plea bargains subsequent to the PDC were to be accepted; but, in fact, plea bargaining continued up to and including the day of trial.

On September 1, 1973, the Arizona Rules of Criminal Procedure became effective. The "speedy trial" rule¹⁶ required defendants released from custody to be tried within 90 days of arraignment (or 120 days from initial appearance before a magistrate). This rule required the City Court to begin scheduling new cases on dates for which a full trial caseload had already been set. At the beginning of September 1973 DWI jury trials were being scheduled six months from arraignment. The new code of criminal procedure also imposed severe restrictions on granting continuances and provided that no continuance can be made for longer than 30 days.¹⁷

Significant Events and Outcomes. The enforcement effort, while continuing at a greater rate than during the pre-ASAP years, declined from 10,401 DWI arrests in 1972 to 9,329 in 1973. The court-prosecution component processed 7,151 cases in 1973, leaving an estimated pending backlog of 955 jury trials and 17 nonjury trials. The PDC-intensive plea-bargaining program resulted in a virtual halving of the trial backlog. There were approximately 1,700 trial cases pending at the start of the year, 972 at the end. Nearly 58% of all DWI arrests in 1973 resulted in dismissal, an indication of widespread plea bargaining.

The DWI plea-bargaining policy of the City Prosecutor's office did not include regular referral to alcohol education or treatment programs as a condition of the bargain. Cases involving first offenders with a BAC of .16% or below and not involving an accident were automatically bargained, usually involving a dismissal of the DWI charge with a plea of guilty to one of the back-up or amended charges (e.g., reckless driving, speeding).

Since City Court was not a court of record, an automatic retrial was allowed on City Court cases appealed to the Superior Court. A common practice of many defendants, particularly those with private counsel, was to plead not guilty at arraignment and request a jury trial. If a suitable plea bargain could not be arranged, they would then change their plea to guilty on the day of the trial and file

16. Ariz. R. Crim. P. 8.2.c.

17. Ariz. R. Crim. P. 8.5.b.

an immediate appeal in Superior Court. The Superior Court judges were disinclined to hear appeals of minor "lower court" cases; consequently, greater pressure to plea bargain was placed on the City Prosecutor staff in City Court cases appealed to Superior Court. At the end of 1973, 641 appealed DWI cases were pending in Superior Court. Most were expected to be disposed of by plea negotiation.

In anticipation of implementation of the "speedy trial" scheduling requirements, the then Chief Presiding Judge of the City Court had requested additional court facilities for the conduct of trials. A special research project of the city Budget and Research Department found that only 4% of the jury cases docketed each month were actually tried and concluded that the City Court could handle the projected increase in trials resulting from the "doubling up" of the trial caseload without additional courtrooms. The City Council concurred with this estimate and the request was denied.

Near the end of the year the then Mayor authorized an investigation by the Phoenix City Police into alleged irregularities in City Court operations. As the investigation endured, court morale lagged and police-court relations were exacerbated. The police found only inefficiencies, rather than judicial misconduct. One respected judge, awaiting reappointment at the time, resigned, while the incumbent Chief Presiding Judge was replaced as administrative head of the City Court. The City Council adopted a requirement that the position of Chief Presiding Judge thereafter be for a one-year term, subject to reappointment.

One significant change in the drinking-driving law was enacted, effective August 8, 1973. The "implied consent" law was challenged as unconstitutional for not requiring a presuspension opportunity for a hearing. The new law remedied this defect, but not before the prior law was invalidated. The 1973 law contained a unique provision authorizing termination of a suspension for refusal to submit to a chemical test if the offender subsequently pleaded guilty to the DWI charge. This provision was determined to be unconstitutional. In the spring of 1975 ASAP's efforts to secure elimination of the one-day minimum jail term for first offense DWI cases were unsuccessful.

The other countermeasure activities continued as planned during the year. Changes for achieving greater processing efficiency were implemented. Referrals from the court to the DWI School and to the ASAP-supported diagnosis-referral program for high-risk problem drinkers were accomplished concurrently. Previously, the in-depth diagnostic activity

was postponed until the DWI School had been completed. All DWI offenders attending this diagnosis-referral program also attended the DWI School. During the year, the DWI School began a special group counseling program for emerging problem drinkers to supplement its educational, counseling, and referral program. A recidivism specialist was added to the staff of the diagnosis-referral program to provide special assistance to multiple-DWI offenders.

In October a Judicial Seminar in Alcohol Safety, provided as an ASAP-support service by the National Highway Traffic Safety Administration and conducted by the Indiana University Institute for Research in Public Safety, provided an opportunity for the City Court judges and other key system personnel to meet to discuss system problems and to seek solutions for enhancing the efficiency and effectiveness of system operations. The concept of a diversionary program for DWI offenders to alleviate the existing backlog problems and to provide an incentive for participation in ASAP-supported alcohol education and treatment activities was presented by the Chief ASAP Prosecutor. The attendees endorsed this approach and, with the approval of the Intergovernmental Programs Administrator, the ASAP Director and the Chief ASAP Prosecutor were designated to cooperate in the development of a proposed procedure for implementing an experimental diversionary process. Work on the development of this program continued through the remainder of the year.

Other significant events in 1973 were (1) the reestablishment of the Citizen's Alcohol Safety Advisory Committee late in the year by the City Council for the purpose of evaluating ASAP countermeasure activities and submitting recommendations for continuation with local funding of activities of demonstrated effectiveness; (2) the commitment of additional funds to the project; and (3) the agreement of the city to continue project countermeasures through the end of 1974.

4.3 Third-Year Activities - 1974

Processing Procedures. Effective August 15, 1974, a new post-arrest processing procedure was begun. This program, called PACT (Prosecution Alternative to Court Trial), provides all DWI offenders an opportunity to earn a reduction of the DWI charge upon satisfactory completion of an educative or rehabilitative program, thus avoiding the mandatory one-day jail sentence attached to conviction for DWI. A description and analysis of this program is provided in Section 5.0 of this report.

In January 1974, at a time when public respect for the City Court had waned and the morale of court personnel was low, a new Chief Presiding Judge was appointed. As he became more knowledgeable about the City Court system, this energetic and efficiency-minded judge began instituting changes in the City Court structure and procedures. He abandoned the previous court policy of using "continued for sentencing" in DWI cases, preferring instead that the judges use their six-month probation power. The master or central docket system in operation was changed to a modified division system, with each of the twelve judges being permanently assigned a specific courtroom rather than rotating among courtrooms for daily assignments. All major traffic cases, including DWI, were assigned to a specific division at the time of arraignment and made the responsibility of the division judge for all subsequent processing and disposition.

One new law promised to change existing City Court procedures. The state legislature authorized a procedure whereby the Superior Court could accept a record of the proceedings made in a lower court trial, if the record was sufficient and in proper condition, and then decide only issues of law rather than trying the case de novo.¹⁸ Planning for implementing case recordation in City Court on a limited basis was begun in 1974 by the new Chief Presiding Judge and the city administration. Use in DWI cases was contemplated to lessen the number of appeals to Superior Court.

Significant Events and Outcomes. The enforcement effort in Phoenix declined slightly from the previous year, from 9,329 in 1973 to 8,935 in 1974. During the final quarter of the year the arrest rate began to rise again, approaching the record rate achieved in 1972. The high rate of plea-bargained dispositions also continued. For example, in the first quarter 79% of all concluded cases were resolved by plea bargain and 11% by dismissal not involving plea bargain. The prosecutor policy did succeed during the year in reducing the trial backlog in both City Court and Superior Court by one-half; however, some of the reduction occurred after the PACT program became operational. Referral to educational and rehabilitative programs as a part of any bargain did not occur with great frequency during the first half of the year. This pattern of disposition continued until the commencement of the PACT program in August. Court referrals to the DWI School of those pleading guilty at arraignment decreased during the year, as did completion experience for those schools. The DWI School was discontinued June 30, 1974.

18. Ariz. Rev. Stat. § 22-3711.

As noted above, a new Chief Presiding Judge of the City Court was appointed in January. This appointment proved to be a highly significant event in the development and growth of the Phoenix drinking-driver control system. The ASAP Director and staff worked closely with him after his appointment, orienting him to the ASAP system objectives and procedures and working with him on the new diversionary program. He became an enthusiastic exponent of the ASAP approach and assumed an active role in the design and promotion of the diversion program.

With the impetus provided at the judicial seminar held in October 1973, the ASAP staff and the Chief ASAP Prosecutor continued development of the proposal for a diversionary program for DWI offenders. A true diversionary process was conceived by the Chief ASAP Prosecutor, who proposed diverting DWI offenders after arrest but before arraignment. Individuals accepting the diversionary program by completing the required education or treatment would earn dismissal of the DWI charge. The City Police would not accept this approach, nor would the Chief Presiding Judge, who did not want to run afoul of the "speedy trial" rule and felt a "judicial experience" for the offenders would be beneficial. An obvious economic consideration in this decision was the potential loss of city revenue if no fines were imposed.

A new approach for operating a diversionary program was then developed by the Chief ASAP Prosecutor in cooperation with the ASAP staff, the Chief Presiding Judge of the City Court, and the Intergovernmental Programs Administrator. This was called "quasi-diversionary" and was characterized by an earned charge reduction feature providing incentive for DWI offenders to cooperate in prescribed alcohol education and treatment. Although nominally a prosecutor's program, the "Prosecution Alternative to Court Trial" or PACT program, in actuality was conceived as a combined court-prosecutor effort. DWI offenders would be processed through normal court procedure---arraignment, pretrial disposition conference (PDC), and a final sentencing or disposition hearing. The bargain offered by the prosecutor would be "approved" or accepted by the court at the PDC before the offender began the education or treatment activity. If the offender satisfied the program, he would then be given the "deal" at the final disposition hearing and allowed to plead guilty to less serious traffic charges. If he did not comply, trial would be set before expiration of the ninety-day speedy trial deadline.

In April 1974 the PACT proposal was presented to the City Council for consideration. The Council endorsed the concept, being impressed with the planned efficiencies and the certainty and amount of revenue to be gained through fines. The Council endorsement was facilitated by the backing of an ASAP-supporting, attorney member. In April, at a one-day meeting sponsored by the ASAP, the proposal for the PACT program was presented to the City Court judges for consideration and comment and received the endorsement of the court. Also in April the Budget and Research Department of the city rejected the City Attorney's request for additional personnel to handle the increased City and Superior Court caseload and to implement the PACT program. No additional attorneys were authorized, and the request for case counselors to conduct the PACT orientation, intake, and referral activity was reduced from six to three. This reduction was based on what proved to be an underestimation of the volume to be processed through the PACT program. In May an important endorsement of the ASAP and the PACT approach was received. The Citizens Alcohol Safety Advisory Committee recommended continuation of the ASAP activities as an integrated program. In addition, the Committee "wholeheartedly" recommended the implementation of the PACT program by the city.

In June the City Council approved implementation of the PACT program and authorized a six-month pilot test, after which the ASAP staff was to report the findings of the program's utility and effectiveness. A Probation and Rehabilitation Seminar conducted by Indiana University was held the same month for the education, treatment, probation, diagnosis, and referral agencies involved with the ASAP program. The role of the various agencies in the PACT program was reviewed and processing procedures determined.

In July a Prosecutors' Seminar was held for the City Prosecutor's staff. Again, Indiana University provided the instructional staff for this seminar effort. The PACT proposal was presented by the ASAP staff, the Chief ASAP Prosecutor, and Chief Presiding Judge. After spirited debate about the PACT program, which lacked regular prosecutor staff input in the design phase (the Chief ASAP Prosecutor, it should be noted, operated independently of the regular staff), most of the prosecutors accepted the PACT concept. It was agreed that all DWI offenders, regardless of past record, would be eligible to participate in the PACT option once in a two-year period. Guidelines to govern the plea bargain, based on a sliding scale of traffic violation demerit "points" (usually two to five) related to BAC at time of arrest, were agreed upon. The prosecutors recognized the necessity of maintaining the credibility of the control

system by vigorously prosecuting DWI offenders who refused or dropped out of PACT, regardless of BAC.

Planning and preparation for implementation of PACT, including hiring and training of personnel, design of forms, development of procedures, and general orientation and coordination, continued through the period from June to the anticipated start-up date of August 15. On the day before the PACT began, the ASAP hosted a meeting of the counter-measures agencies for final orientation and coordination. Subsequent meetings with system agencies were conducted by the ASAP throughout the PACT trial period.

In September, approximately one month after PACT's start-up, the City Court judges convened at a Judicial Seminar, again guided by Indiana University personnel, to review the progress of the program and to recommend improvements. The judges renewed their support for the program at that time. Ironically, the judges declined to recommend repeal of the one-day jail sentence for DWI conviction because of its value in inducing cooperation with the PACT program.

The impact of the PACT program was immediate and impressive, as can be seen in Tables 4-1 and 4-2. From August 15 to December 31, 2,300 defendants were processed through the system; 98% pleaded not guilty at arraignment, and of these 91% accepted the PACT program. A daily average of 27 DWI offenders were briefed and interviewed by PACT counselors, 25 of whom accepted the program, while one rejected it and was set for trial, and one rejected it and was given a non-PACT plea bargain. Prior to PACT only 10 new DWI cases were being referred each day for education or treatment. Through the end of 1975 over 98% of the PACT participants successfully completed the required program.

There were other important changes in the system during 1974. A new educational program was initiated to replace the DWI Schools, which were discontinued June 30. These small-group DWI Prevention Workshops were provided under contract with a nonprofit alcohol services agency. This activity was supported by a \$35 fee assessed each participating DWI offender. The workshops experienced more satisfactory completion rates than had the DWI Schools (93% vs. 70%).

A new streamlined screening procedure for identifying problem drinkers was implemented July 1 and was utilized by PACT personnel during the initial orientation and intake process.

Table 4-1

PACT-PDC ACTIVITY BY WEEK
AUGUST - DECEMBER 1974

	8/16	8/23	8/30	9/6	9/13	9/20	9/27	10/4	10/11	10/18*	10/25	11/1	11/8*	11/15*	11/22	11/29*	12/6	12/13	12/20	12/27*	12/30*	TOTAL	Daily Average**
TOTAL APPEARING AT PACT & INTERVIEWED	21	77	97	65	121	122	129	130	162	76	153	145	153	104	149	76	126	154	116	98	26	2300 (100%)	27
PACT Accepted; Entered Rehab	19	72	90	59	113	118	120	122	148	69	136	130	130	90	134	75	120	143	99	87	26	2100 (91.3%)	25
PACT Rejected; Trial Date Set	1	4	3	6	8	4	6	5	8	5	12	10	16	8	10	1	4	8	13	7	0	139 (6%)	1
PACT Rejected; Other Plea Bargain	1	1	4	0	0	0	3	3	6	2	5	5	7	6	5	0	2	3	4	4	0	61 (2.7%)	1
FAILURE TO APPEAR	22	34	23	17	44	35	36	40	57	30	62	36	30	33	27	3	13	33	22	38	0	635	7
Rescheduled	19	26	19	13	28	25	29	32	46	21	44	22	22	28	17	0	1	19	10	27	0	448	5
Warrant Issued	3	8	4	4	16	10	7	8	11	9	18	14	8	5	10	3	12	14	12	11	0	187	2

*Court holiday during this week. (Two holidays during week of 12/27; week of 12/30 includes only one Court day.)

**Daily average is based on PACT Operations from 9/9 to 12/30/75, or 75 Court days.

Source: Phoenix Alcohol Safety Action Project, Quarterly Report, October-December, 1974, p. 28.
(Based on hand-tabulation of case files by PACT administrative staff.)

Table 4-2

PACT DISPOSITIONS BY WEEK
SEPTEMBER - DECEMBER 1974

	Sept.	10/4	10/11	10/18*	10/25	11/1	11/8*	11/15*	11/22	11/29*	12/6	12/13	12/20	12/27*	12/30*	TOTAL
RESET - NEW DISPO DATE	0	2	1	15	6	0	17	13	45	30	6	64	41	15	0	255
FTA - WARRANT ISSUED	1	7	6	9	2	0	8	5	8	2	3	11	6	1	0	69
TOTAL PACT COMPLETIONS	3	53	34	82	49	22	97	104	185	91	136	185	171	27	0	1239 (100%)
Successful PACT	3	53	34	82	46	21	95	103	179	90	133	183	171	27	0	1220 (98.5%)
Set For Trial	0	0	0	0	1	1	2	1	6	1	3	2	0	0	0	17 (1.4%)
Other Plea Bargain	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	2 (0.1%)

*Court holiday during this week. (Two holidays during week of 12/27; week of 12/30 includes only one Court day.)

Source: Phoenix Alcohol Safety Action Project, Quarterly Report, October-December, 1974, p. 28.
(Based on hand-tabulation of case files by PACT administrative staff.)

Under sponsorship of the ASAP, planning began for a Rehabilitation-Probation-Referral Center, which was to become a division of the City Court. It was intended that this center house in one facility a number of services previously scattered throughout the city and lacking any central administration. All ASAP-supported short-term rehabilitation countermeasures, including the volunteer probation program and the PACT orientation activity, were to be provided through this center.

At the end of the year the ASAP received informal notification that it had been selected for continued partial funding by the National Highway Traffic Safety Administration for two additional years. The PACT and other ASAP program activities were assured of continued operation until the end of 1976 through a combination of federal, city, and offender-provided funds.

4.4 Fourth-Year Activities - 1975

Processing Procedure. There were no major changes in processing procedures during the year. Attention was paid to refinement and improvement of the existing PACT program, since multi-agency involvement increased the potential for difficulties resulting from communication and procedural deficiencies.

The most prominent alteration in processing practice was the institution of a random assignment program in April to evaluate the efficacy of the short-term rehabilitation programs being used in the PACT referral network. Most individuals identified as social drinkers during the PACT screening process continued to be assigned to small-group workshops, while approximately 20% of this group served as a control and was required to complete a home-study program. Problem drinkers identified during PACT screening were directed to one of two small-group, short-term rehabilitative programs (Power Motivation Training or DWI Therapy Workshops) or to a home-study control group. Random assignments continued until the end of the year, at which time the minimal treatment control groups were discontinued.

The 1974 legislation authorizing the recordation of City Court trials, for the purpose of limiting Superior Court appeals to questions of law based on the transcribed record, was implemented in July 1975 after a successful pilot test the previous month. A court reporter system was established to allow recordation of City Court trials. DWI trials were regularly recorded during the remainder of the year. This program promised to further reduce the number of appeals to the Superior Court, while eliminating the de novo trial problem.

Significant Events and Outcomes. In January formal notification was given to the ASAP by NHTSA that Phoenix would receive federal funding to continue operations for another two years, through December 1976, with six additional months approved for completion of program evaluation and reports. The funding sources for drinking-driver activities originally supported by ASAP had changed prior to the end of the original three-year project period. Judges, prosecutors, and special DWI patrolmen previously supported by federal ASAP funds were now paid with city funds, while the short-term rehabilitation programs were supported by client fees.

In January the City Council conducted a review of the PACT program after the initial six-month period and, upon rendering a favorable assessment, authorized continuation for another six-month period. A critical one-year performance evaluation would be conducted at that time.

Two new short-term rehabilitation programs were begun in February, replacing the ASAP-funded diagnosis-referral program at a private medical center as the primary resource for problem drinkers. Both of these new modalities were provided under contract with the nonprofit agency which had successfully provided the prevention workshops for social drinkers. The ASAP had now organized a range of rehabilitation options, which it called "alcohol awareness programs." In addition, the diagnosis-and-referral function performed previously at the medical center was now provided in-house with the establishment of a diagnosis and referral interview capability. Since 1974 the ASAP had been moving steadily toward the creation of a multi-service program for DWI offenders in one setting under one coordinating agency.

A new organizational entity, the Rehabilitation-Probation Center, was established in March and, effective July 1, became a division of the City Court. This center represented the outcome of diligent efforts by the ASAP staff, in cooperation with the city management, Intergovernmental Programs Administrator, and the Chief Presiding Judge. Personnel performing the screening, diagnosis, referral, and short-term rehabilitation functions were housed together under the control of the Center administrator, who was the ASAP Assistant Director serving in the new position on a half-time basis.

A minor change in the drinking-driver control law effective in August was the reduction of the "DWI felony" charge to a "high misdemeanor," but still subject to prosecution only in the Superior Court. The "speedy trial" rule was also modified in August; the time allowed to bring a case to trial became the greater of 120 days from arrest or 90 days from arraignment. Since DWI cases are scheduled for arraignment within ten days of arrest, this change had

the effect of setting a 120-day limit to bring a case to trial. The PACT program had operated successfully within the prior 90-day constraint.

A major milestone for the PACT program occurred in August. Reports on PACT progress after one year were prepared by the ASAP staff, the Citizens Alcohol Safety Advisory Committee, and the Budget and Research Department for consideration by the City Council. The reports indicated a positive program impact.

The ASAP report demonstrated several effects of the PACT program. The DWI arrest rate had increased rather than decreased, as some had predicted would happen because of lowered police morale due to PACT. In fact, the arrest rate had increased 29% for the period August-July, 1974-75, compared to the same twelve-month period in 1973-74. DWI offenders were receptive to the PACT option. Ninety-one percent of those attending the PACT orientation session accepted the PACT offer and entered the short-term rehabilitation program. The frequency of assignments to rehabilitation programs increased significantly, with 65% of DWI offenders arrested being referred to rehabilitation, as compared to 46% before PACT. The ASAP management concluded that:

As a major system change designed to relieve oppressive and costly police overtime for court appearances related to DWI citations, PACT has undoubtedly been successful. As a method of moving DWI cases through the judicial system in an orderly manner within the Arizona Supreme Court's 90-day rule time frame, PACT has been very helpful. As a way of exposing larger numbers of people than ever before possible to reeducation/rehabilitation modalities, PACT has provided an excellent medium of entry.¹⁹

The ASAP report noted that PACT had not operated without a certain though insubstantial amount of errors and delays occasioned by the large numbers (6,509) processed through the system.

The report of the Citizens Alcohol Safety Advisory Committee concluded that:

. . . the PACT program has operated remarkably well in its first year considering the novelty and rather far-reaching effects of the program.²⁰

19. Moya Easterling, Memorandum of August 22, 1975, to Peter Starrett.

20. Marriner P. Cardon, Letter of September 9, 1975, to Hon. Timothy A. Barrow.

The Committee, while identifying lingering problems involved with PACT, thought it had been somewhat successful in achieving its original goals, including the implementation of an equitable procedure for handling DWI plea bargaining and the establishment of a means for making available to DWI offenders counseling, instructional and rehabilitation programs and for testing the efficacy of those programs.

The City Council responded to these reports with approval. The PACT program in effect became part of the standard operating procedure for the Phoenix drinking-driver control system, achieving a final integration into the routine of prosecutor and court operations.

In December 1975 local representatives of the Phoenix system testified about the PACT program before the Adjudication Task Force of the National Highway Safety Advisory Committee meeting in Phoenix. The testimony was predominantly pro-PACT, reflecting the same attitudes and opinions described in Section 6.0 of this report. The City Prosecutor presented data which demonstrated that a potential problem did not occur: the number of repeat DWI offenders who had been through PACT was not extremely high (e.g., April 1975 - 22; November 1975 - 63). Of that volume of repeaters, 81% had pleaded guilty to the DWI charge. The anticipated deluge of repeaters requesting trials and thereby creating a burden on court and prosecutor resources was illusory.²¹

A major series of event occurring in 1975 involved the administration of the PACT program. The attorney who devised PACT and served as the Chief ASAP Prosecutor during the pre-PACT period was responsible for management of the City Prosecutor's office involvement in the program. He operated quite independently of control by the City Prosecutor and, until early 1975, was actually more closely associated with the ASAP program, both in physical location and professional loyalty. He had participated in the design of system processing procedures along with the ASAP staff and the Chief Presiding Judge and had functioned as the major PACT attorney, preparing proposed plea-bargain offers and appearing in court sessions as needed. Apparently, as a result of insufficient professional and clerical resources and limited management skills, the PACT attorney had found it difficult to administer the PACT routine. Requests for additional personnel were unheeded.

Responding to these problems, the City Attorney decided early in the year to assume administrative control of an operation which he had previously ignored. The City Prosecutor was given the responsibility of operating the PACT program in an efficient manner. The main PACT attorney, his assistant, and clerical personnel were integrated into the regular operations of the

21. Louis Levin, Transcript of Adjudication Task Force Meeting, December 18, 1975, pp. 27-28.

City Prosecutor. Improved, written procedures were prepared and the general resources of the office applied to ensure efficient operation of the PACT program. The effort to improve the efficiency of the prosecution component of the PACT program was effective, although not without straining relations among the individuals involved. Later in the year the chief PACT attorney was replaced and reassigned within the agency.

4.5 Summary of the Four-Year Experience

The four years of operation of the Phoenix drinking-driver control system, through the intervention of the Alcohol Safety Action Project with significant federal funding made available to the system, involved major changes in the perception and handling of DWI offenders. The trend of activity during the period can be seen in Table 4-3.

The police agencies were sufficiently motivated to increase and maintain DWI arrest levels. Arrests remained at a 9,000 to 10,000 level throughout the project term.

Guilty pleas at arraignment became increasingly infrequent during the four years, reaching nearly 100% in 1975. This reflected the court policy to encourage not guilty pleas to allow participation in the PACT program. The impact of plea bargaining is also reflected in the increasing proportion of DWI cases dismissed in return for pleas to lesser traffic charges. The plea-bargaining activity in 1972 through mid-August 1974 was the result of the City Attorney policy. The plea bargaining after that date, through the PACT program, represented system-wide policy which the major actors in the control system accepted.

The caseload trend during the four-year period is clear. Pending jury and nonjury trials generally declined, while appeals to Superior Courts were virtually eliminated. The PACT program and court trial recordation program in City Court were responsible for the latter, while plea bargaining, both before and after PACT, served to reduce the pending trial backlog.

One unresolved problem which worsened during the period was the backlog of unserved bench warrants, usually issued for failure to appear in court. No information is available as to the exact nature of this problem or attempts to seek a solution.

TABLE 4-3

PHOENIX DRINKING-DRIVER CONTROL SYSTEM

1972-1975

	1972	1973	1974	1975
Population	701,300	743,400	773,000	670,000
Traffic Fatalities	109	117	131	124
DWI Arrests	10,401	9,329	8,935	10,804
Not Guilty Arraignment Plea by Year of Arraignment Outcomes*	57.4%	75.0%	92.5%	99.3%
● Guilty of DWI	70.8%	41.4%	48.1%	12.7%
● Not Guilty	1.7%	1.1%	0.8%	0.8%
● Dismissed	27.6%	57.5%	51.1%	86.5%
DWI Cases Pending of End of Year				
● PDC	----	284	1,632	1,798
● PACT Disposition Sessions	----	-----	816	1,383
● Jury Trials Set	} 1,700	955	160	193
● Non-Jury Trials Set		17	46	31
● Appeals to Superior Court	n/a	641	304	9
Bench Warrants to be Served	n/a	1,184	2,072	3,043
Exposure to Drinking Diagnosis or Screening**	40.7%	30.4%	45.7%	72.7%
Referred to Rehabilitation by Type of Arraignment Plea				
● Guilty	66.5%	72.6%	47.4%	21.3%
● Not Guilty	48.3%	38.8%	60.0%	82.1%
● Overall	56.0%	47.2%	59.0%	81.7%

*Includes total dispositions of DWI cases during the year with an arrest date of 1972 or later.

**Includes persons with an arrest date in the year indicated who received screening or diagnosis in the arrest year or a subsequent year.

SOURCE: Phoenix Alcohol Safety Action Project, numerous reports, including Analytic Study IV, An Analysis of Judicial System Performance (1975) and Analytic Study VI, Analyses of Drinker Diagnosis and Referral Activity and Alcohol Rehabilitation Efforts (1975).

The ASAP approach is based on the premise that traditional sanctions alone for DWI offenders have not been proven to be effective and that a DWI control program must identify and respond to underlying drinking problems in order to achieve success. The process of identification or screening of drinking drivers in Phoenix was most successful during 1975, the first full year under the PACT program. Nearly 73% of those arrested for DWI were subjected to drinking diagnosis or screening of some type. The frequency of referral of DWI offenders to special short-term education or treatment programs was also highest during 1975, reaching approximately 82% of all DWI offenders arraigned. The change in the method of referring offenders to rehabilitative programs is seen in the type of plea at arraignment that results in a referral. In 1972, when there was no mandatory jail penalty for conviction, there was a higher guilty plea rate and a greater rate of referral for those pleading guilty (67%); while in 1975, when the not guilty plea rate was nearly 100% of all those arraigned, referrals were most likely to result after a not guilty plea (82%). As a means for identification and referral to rehabilitative programs, the PACT program was successful.

The ultimate success of the PACT program, however, may well be determined by the efficacy of the rehabilitative programs to which DWI offenders are referred through PACT. Evaluation of education and treatment impact will be concluded in 1977. Preliminary results are not exceptionally encouraging. It appears that, based on preliminary results, DWI offenders undergoing treatment are less likely to recidivate than those not undergoing treatment, but there is nothing to indicate that exposure to short-term rehabilitation or education produces lower recidivism than exposure to minimal treatment. These conclusions were reached tentatively by the ASAP evaluation staff and should be viewed with caution until the evaluation effort is completed in 1977. 22

22. Phoenix Alcohol Safety Action Project, Analytic Study VI, Analyses of Drinker Diagnosis and Referral Activity and Alcohol Rehabilitation Efforts, 1975, pp. 136-140.

5.0 THE PACT PROGRAM

5.1 Genesis of PACT

As has been described in recounting the history of the Phoenix drinking-driver control system during the first two-and-one-half years in which ASAP was operating to improve the local system, the prosecutorial and judicial activities within that system had become increasingly purposeless and ineffective. Despite a substantial increase in judicial and prosecutorial manpower and facilities to provide a fair, efficient, and lawful adjudication and disposition capability for the anticipated influx of large numbers of DWI cases, the system failed to achieve its basic objectives. Constraints imposed by state law, limited system resources, defense bar trial tactics and the increasing caseload made the operation of the system unacceptable to many Phoenixians.

There appeared to be no possibility to eliminate the required mandatory jail sentence for a first DWI conviction, at least through legislative recourse. The legislative response was that the deterrent value of a mandatory jail term should be maintained; local resources should be increased to implement the law. The overloaded jury trial schedule and the inefficient cycle of trial in City Court, followed by the automatic de novo retrial in Superior Court continued to cripple the system. Despite unrestricted and extensive plea bargaining by the City Prosecutor in 1973 and 1974, the caseload remained unmanageable. Large numbers of DWI offenders avoided any remedial action other than fines, few were being referred to education or treatment via the plea bargaining process, and virtually none were going to jail.

In recognition of the need to revitalize the system for processing DWI offenders, restore fairness to its procedures and ensure the regular referral of drinking drivers to non-traditional dispositional programs for education and treatment, a quasi-diversionary program was devised, mainly by the Chief ASAP Prosecutor. The Prosecution Alternative to Court Trial (PACT) was designed to reestablish the control system to a state of efficient and fair operation, while applying innovative sanctions, either alone or in conjunction with traditional punitive sanctions.

5.2 The PACT Concept

Using the opportunity presented by the inhibiting problem of a large DWI case backlog, the ASAP Staff, the Chief ASAP Prosecutor, the Chief Presiding Judge, and the Intergovernmental Programs Administrator cooperated in the development and promotion of a proposal to alleviate the

case processing problem while achieving more basic system objectives, i.e., to prevent recurrence of abusive drinking-driver behavior. The approach selected was the "earned" charge reduction method.

Plea bargaining customarily involves charge reduction but seldom is the offender required to earn his bargain. The planners of PACT felt that meaningful behavioral change could be more readily achieved and sustained if the participant in a DWI plea bargain was required to earn the charge reduction and avoidance of jail by demonstrating a willingness to complete a short-term program of alcohol reeducation or treatment. The use of the carrot-and-stick approach provided an incentive for the offender not present in traditional plea bargaining. Under the traditional plea-negotiation procedure the benefit of the bargain, in the form of a reduced charge or sentence, is realized immediately by the offender before performance of any additional conditions of the plea-bargaining agreement is required. Many of the key local policymakers considered it desirable to institute a uniform plea-bargaining policy applicable to all DWI offenders. Such an approach was desired in order to remove the inequities of the existing plea-bargaining practice of the City Attorney which was based solely on BAC. Many of the offenders represented by private counsel seemed to get better "deals" than individuals without counsel or those with the most obvious symptoms of problem drinking (e.g., with a high BAC). The prosecution administrators, however, felt that the proposed uniform policy was not desirable.

The initial, tentative objectives for the earned charge-reduction approach entitled Prosecution Alternative to Court Trial (PACT) were expressed in an early program proposal statement. The program was designed:

- to reduce congestion in both city and superior court by efficiently channeling the majority of drinking-driver cases away from traditional court procedures;
- to remove from the traditional system of adversary trial those accused of crime who do not seriously contest their guilt and who are likely to benefit from an effective program of rehabilitation;
- to reserve traditional judicial resources for handling "cases of last resort," thus allowing for a firm prosecution with minimal plea bargaining;
- to get all DWI offenders into an alcohol reeducation and rehabilitation program as quickly as possible after their apprehension by police;

- to develop and evaluate a research model that may prove to be workable in other jurisdictions; and,
- to implement an adjudicatory system for drinking-driver offenses that is both more efficient and less expensive than the present one while still preserving all of the defendant's constitutional rights.²³

The proponents of the PACT program felt that this procedure would be efficient, economical, and fair. With few court trials anticipated under the new approach, many economies would be created and a certainty of revenue through fines and fees assured. Virtually all drinking-driver cases would be processed expeditiously within the time constraint of the 90-day speedy-trial rule. Fairness would be achieved because an acceptable plea bargain opportunity would be available to all DWI offenders rather than just those with the economic means and inclination to contest the charge through all possible avenues of relief.

There was some perceived detriment occasioned by the new system. Some in the community, including a key state legislator and many police officers, felt the system circumvented the intent of the state law requiring the one-day jail sentence and diminished the deterrent value of the mandatory sanction. The defense bar was understandably concerned with the potential loss of income, because attorneys would be less essential in a standardized plea-bargaining system. Some prosecutors felt the addition of rehabilitative conditions to plea bargaining would require a needless prolonging of the process and unfairly require offenders to do more to get the same bargain (the reduced charge) currently available. Under the present system, the bargain was concluded at a pre-trial conference and the case was terminated with no additional time required to complete a rehabilitation program, and also no need for subsequent court dates. Other prosecutors resented the loss of discretion involved in a routinized plea-bargaining program.

Since plea-bargaining was necessary to moderate case volume because of the continued high DWI arrest rate and the low prospect for significant increase in prosecutor and court resources, the proponents of PACT suggested it as a purposeful, consistent method of administering the unavoidable plea bargaining process. It was not, they said, a question of avoiding the mandatory sentence since that was

23. Robert Holtzman, Proposal for a Prosecution Alternative to Court Trial (PACT), February 27, 1974.

being done under the pre-PACT system; it was, rather, a question of whether that plea-bargaining policy would be used to implement a reasonable rehabilitative alternative which the offender would consider less undesirable than the mandatory jail penalty.

During the planning phase, the PACT program was the focus of controversy and debate among the ASAP staff, criminal justice personnel, city management, attorneys and legislators. After nearly a year of development, the program was established on August 15, 1974, and continued to generate discussion as to its desirability, legality, and effectiveness. This concern tended to diminish over time as the PACT program demonstrated its value as a fair method of processing DWI offenders.

5.3 Procedures

The procedures for participation in the PACT program are established according to the functions performed and the temporal sequence in which these process functions are accomplished. Figure 5-1 is a simplified presentation of the functional flow during the PACT process. Figure 5-2 is a flow chart prepared by the Phoenix ASAP to describe the entire offender flow process in detail.

(1) DWI Enforcement. The procedures are the same as those described in Section 4.1 regarding the detection, apprehension and processing of DWI offenders by Phoenix patrolmen. The DWI enforcement function is the intake point for entry into the control system and ultimately the PACT program.

(2) Arraignment. The arraignment for DWI offenders has not changed. Offenders released on their own recognizance must appear in City Court for arraignment within four to ten days after arrest; those in custody appear on the day following arrest. The purpose of an arraignment is apprise the offender of the charge, advise him of his rights, including the right to counsel, and accept the plea to the stated charge. In order to encourage participation in the PACT program the arraigning judges urge all DWI offenders to enter a plea of not guilty. If a plea of not guilty is entered, the offender is provided information on the nature of the PACT program and instructed to appear for a pretrial disposition conference (PDC) on a date set within fourteen to twenty-one days of arraignment. Prior to attendance at this next court proceeding, the offender is required to attend the PACT orientation session scheduled on the PDC date.

FIGURE 5-1
PACT PROGRAM FUNCTIONS

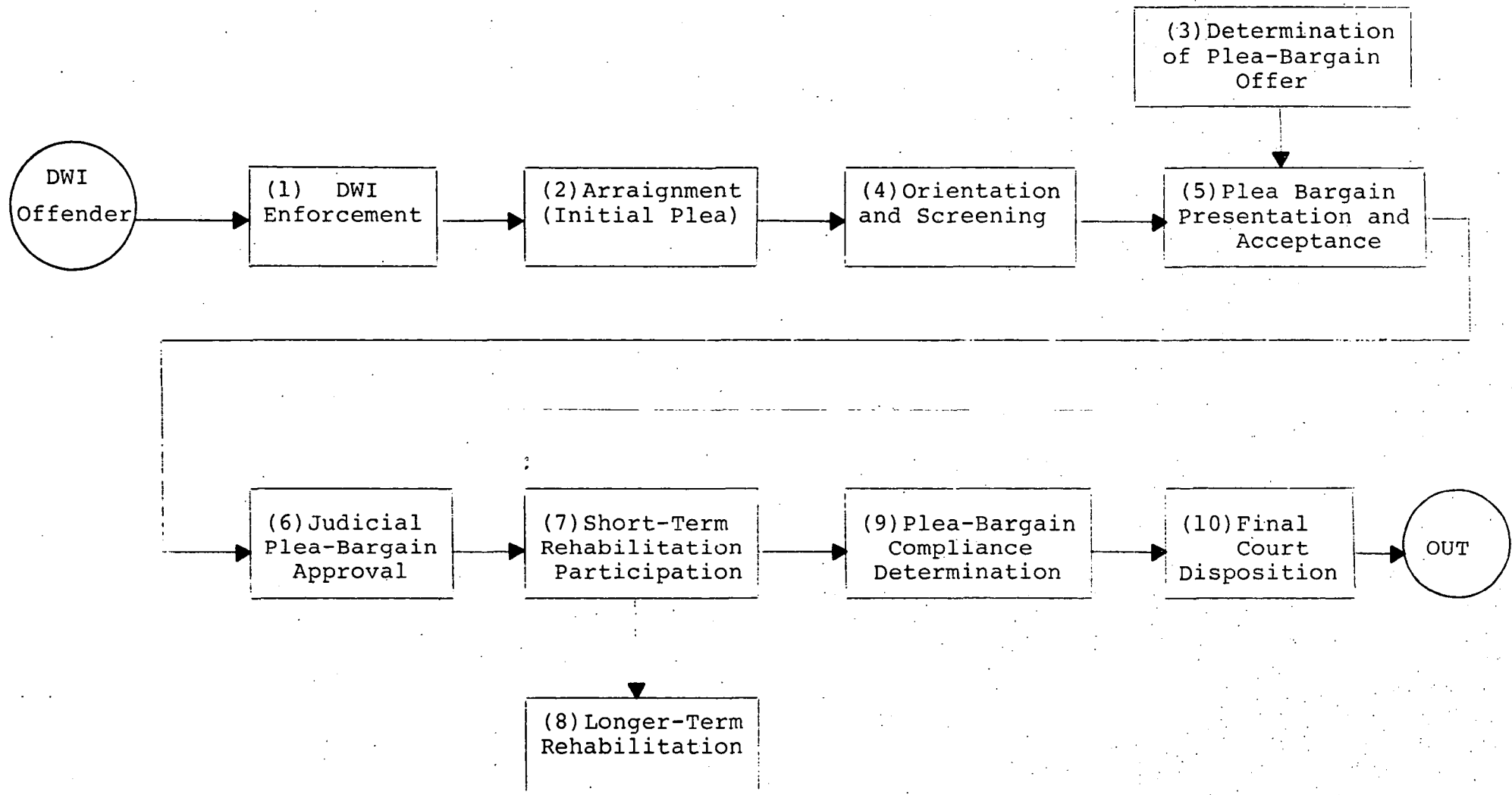
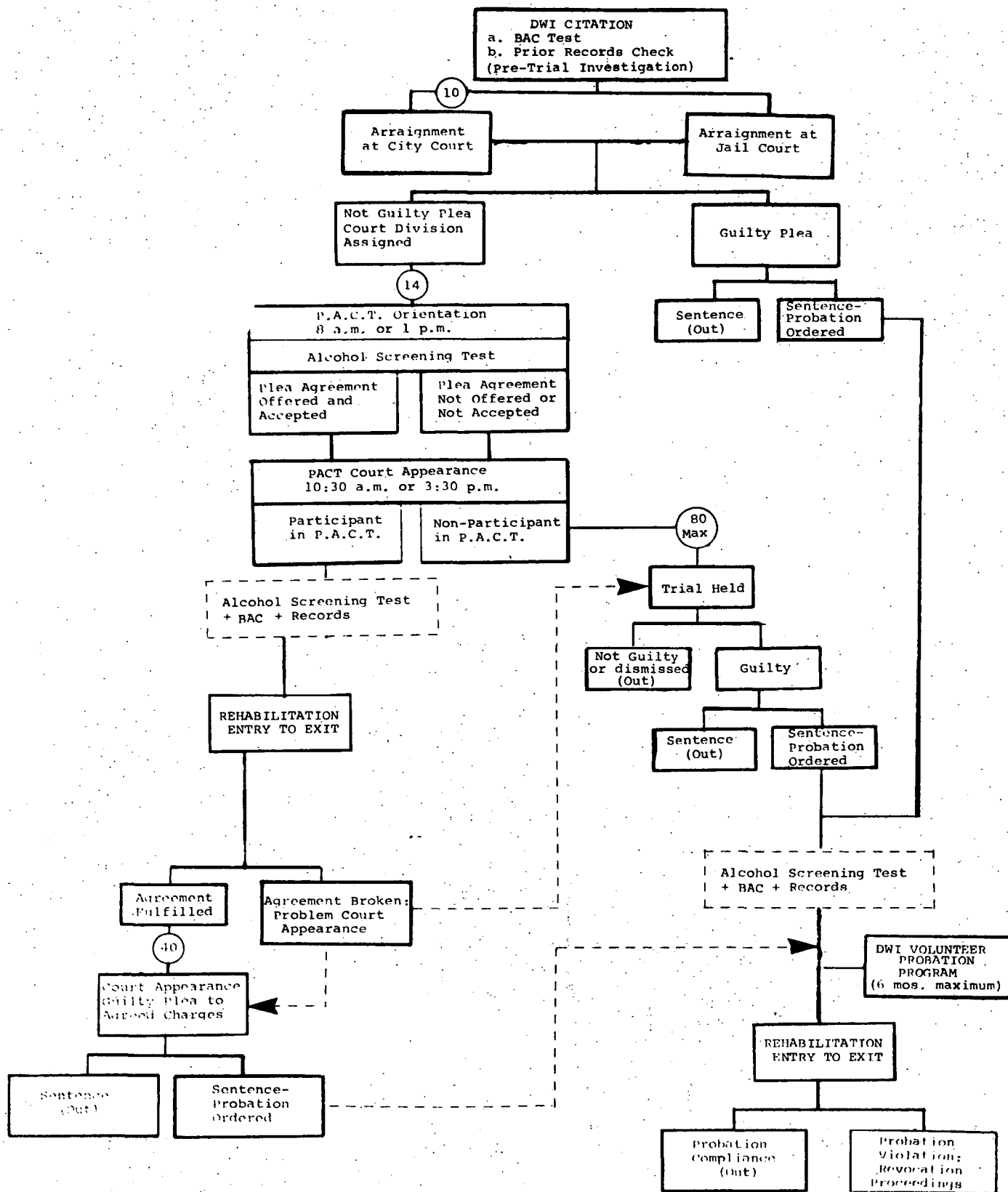


FIGURE 5-2

Phoenix Drinking-Driver Control
System Flow Chart (1975)



○ Denotes approximate elapsed

(3) Determination of Plea Bargain Offer. Several days before the PDC/PACT Orientation date, the PACT Attorney (prosecutor) will review the DWI offender's file and determine the plea bargain offer. The initial criterion is that the arraignment date must have occurred since August 15, 1974, a significant cut-off date decided at the inception of the project to determine PACT eligibility. The prior DWI record of the offender is not relevant in determining PACT eligibility. If the offender has previously completed the PACT program through DWI involvement, he is not eligible to participate a second time until two years have elapsed. If the offender is currently participating in the PACT program and receives another DWI prior to its completion, he will be permitted to complete the first PACT as scheduled (rather than being prosecuted for violating a condition of the former plea agreement--no additional DWI violations) and will be prosecuted without opportunity for a plea bargain on the second DWI.

If the offender is eligible, a plea bargaining offer must be determined. The PACT attorney will first analyze the arrest report, BAC, age, accident involvement, disposition of prior DWI arrests, and general driving record of the offender. Offers are usually made on the basis of the BAC of the offender. PACT offers are generally not made if BAC is extremely high or very low, i.e., under .10%, unless there was an accident. The prosecutor will select traffic charges whose point-value totals the number of "points" indicated on the plea-bargain schedule for the offender's recorded BAC. These substitute or "back-up" charges may not be for offenses actually charged or committed by the offender, because the predominant consideration is the number of "points" to be recorded against the offender's driver license. Most proposed plea bargains involve violations with a demerit value of 2 to 5 points. In addition, the proposed penalty, usually a fine of \$110, is also determined. The proposed charges and sanction are inserted into the PACT Agreement form and the offender's file is then sent to the PACT Orientation office. The determination of the plea-bargain offer is essentially a routine, non-discretionary task.

In the few cases in which a guilty plea is entered, immediate sentencing takes place and may include, in addition to a fine or other sanction, a six-month probation in which the offender will be matched with a volunteer partner and probably sent to a short-term rehabilitation program.

(4) Orientation and Screening. The DWI offender is scheduled to appear 2½ hours before his PDC appearance for what is called the PACT Orientation. The first activity in this phase is the administration of an alcohol screening questionnaire designed for the ASAP to determine the existence of problem drinking. After the screening instrument

is completed, the PACT case coordinators, whose primary assignment is to conduct PACT Orientation sessions, score all the questionnaires while the PACT orientation slide show is being presented. An appropriate rehabilitation program will be determined on the basis of the screening test outcomes. Offenders will be classified according to drinker type, i.e., social or problem drinker.

The next activity is a twelve-minute synchronized sound-slide presentation. The primary purpose of this media demonstration is to inform the DWI offenders about the drinking-driver problem in Phoenix and the potential penalties that may be imposed upon conviction, including the one-day mandatory jail term, possible driver's license suspension, and probable insurance ramifications. The PACT program is then explained to present to the DWI offender an alternative to the penalties resulting from conviction. The offender is told that by participating satisfactorily in a short-term rehabilitation program selected according to the seriousness of his drinking problem and by paying a rehabilitation service fee of \$35, he will be permitted to earn an opportunity to plead guilty to lesser charges.

(5) Plea Bargain Presentation and Acceptance. After the slide presentation has been completed, the screening instruments scored, and the tentative rehabilitation assignment determined, the PACT case coordinator meets briefly with the offender (and his attorney). He explains the plea bargain which the PACT Attorney has approved to be offered and the rehabilitation program which the case coordinator has determined is appropriate, based on the screening test. To ensure that the offender understands the agreement, the case coordinator reviews the requirements of the written plea agreement form (see Exhibit 5-1). The agreement sets out the reciprocal obligations of the prosecutor and the offender. At the conclusion of the plea-bargain offer explanation, the offender signs the plea agreement if he accepts, as does his attorney if present. The case coordinator also acknowledges the agreement by signing it. The PACT Attorney had previously signed the agreement when the offer was determined. Finally, the offender, after accepting the PACT offer, is given a written notice of his rehabilitation assignment and is advised where to pay the rehabilitation service fee.

(6) Judicial Plea Bargain Approval. All offenders who were required to attend the PACT Orientation must attend the scheduled pretrial disposition conference regardless of their acceptance or rejection of the PACT plea-bargain offer. If the offender has accepted the PACT, the judge acknowledges

P.A.C.T. AGREEMENT

between

STATE OF ARIZONA

and

Defendant _____ Case # _____

The undersigned parties have read the following P.A.C.T. (Prosecution Alternative to Court Trial) agreement, understand its contents, and agree to its terms:

1. The defendant is voluntarily entering into this P.A.C.T. agreement and can drop out at any time. (See Item 9 below.) Nothing that transpires because of this agreement will be used against him if he is eventually brought to trial. He shall inform the Case Coordinator if he decides to drop out of the P.A.C.T. program.
2. The defendant agrees to cooperate with all agencies to which he is referred. He further agrees to be prompt and keep all appointments and understands that attendance is mandatory.
3. The defendant's conduct shall at all times be as a law-abiding citizen. Defendant shall not indulge in the excessive use of intoxicating liquors (includes receiving a new DWI citation).
4. The defendant agrees to keep his Case Coordinator informed of all changes in address and phone number, both at home and work.
5. The defendant understands that he must continue this program until released by the P.A.C.T. attorney and the court.
6. The defendant understands that he must pay a fee of \$85.00 for program services. If referred to certain treatment programs, an additional fee may be required.
7. As specified in the accompanying letter of assignment, the defendant must attend the

<input type="checkbox"/> DWI Prevention Workshop	<input type="checkbox"/> DRI Treatment
<input type="checkbox"/> DWI Therapy Workshop	<input type="checkbox"/> Power Motivation Training
<input type="checkbox"/> Home Study Course	<input type="checkbox"/> Other
8. The defendant understands that the court may require further participation in rehabilitation activities after the below stated court date, if required by the rehabilitation agency.
9. The parties understand that if the defendant fails to comply with any of the above conditions, including dropping out, this may constitute a violation of this agreement and the case may be referred to the prosecutor for further action, or a more severe penalty may be recommended by the P.A.C.T. attorney for the plea on the agreed upon reduced charges.

Upon successful completion of the terms of this P.A.C.T. agreement, the charge of _____ will be dismissed and the defendant will plead guilty/no contest to _____. The P.A.C.T. attorney will then recommend to the court a fine of \$_____, and time in the Maricopa County Jail of _____ day(s), as penalty for these charges. It is understood that the defendant specifically waives his right to appeal the judgment and sentence to the Superior Court if it is in compliance with the agreement above stated.

THE DEFENDANT MUST ATTEND A P.A.C.T. DISPOSITION COURT APPEARANCE.

DATE _____ TIME _____ COURTROOM _____

Defendant _____ Date _____ Assistant City Attorney _____ Date _____

Defense Attorney _____ Date _____ Assigned Case Coordinator _____ Date _____

REJECT CODE ☐ _____Dist: White - PACT
Canary - DefendantPink - Court
Goldenrod - Prosecutor

Blue - Defense Counsel

the terms of the agreement, ensures the offender understands his obligations and sets a final court disposition date within approximately sixty days.

If the offender refused the PACT offer, he is given an opportunity to indicate his preference for either a court or a jury trial, and a trial date is set. Plea agreements outside of PACT are often concluded for those with low BACs, out-of-state residence, or other excusing circumstances.

(7) Short-term Rehabilitation Participation. Within the sixty-day period after the PDC, the offender is required to complete the assigned rehabilitation. Social drinkers are usually referred to the Prevention Workshops, which involve four 2½-hour sessions scheduled to meet twice a week. Problem drinkers are referred to either the DWI Therapy Workshop or Power Motivation Training. The Workshop involves six 2½-hour sessions and a final meeting which serves as an exiting interview, while the Power Motivation Training program is offered once a month on two consecutive weekends for a total of 32 hours. All three programs are based on small-group interaction.

(8) Longer-Term Rehabilitation. For persons with serious drinking problems, there is an opportunity for additional diagnosis and referral to other appropriate ASAP-related and community resources.

(9) Plea Bargain Compliance Determination. Prior to the DWI offender's return to court for final disposition, the case coordinator determines if adequate information is in the file to enable the PACT Attorney and disposition judge to determine if the plea agreement has been followed. If it appears that the offender has violated the PACT agreement, the disposition court judge will transfer the case to one of the Friday court sessions conducted by the Chief Presiding Judge.

At this "Problem Court" the Chief Presiding Judge determines if there has been a substantial failure to comply and, if not, usually allows the offender to complete the PACT requirements or waives completion if there has been substantial compliance. The most common problem is failure to pay the rehabilitation fee and additional time is customarily given to meet this obligation. These problem cases comprise about 5% of the total PACT case volume. The Chief Presiding Judge has assumed responsibility for what some feel is the City Prosecutor's function, that is, to determine compliance with a plea bargain. The City Prosecutor has acquiesced, however, in the continuation of this practice.

(10) Final Court Disposition. For those PACT participants who meet the plea agreement requirements, final sentencing takes place on the disposition date set at the pretrial disposition conference. At this time the sentencing judge executes the plea agreement by formally accepting the plea to the lesser charges and assessing the agreed penalty (usually a \$110 fine). In cases where further treatment is requested by the rehabilitation program or the prosecutor, the judge will postpone sentence for an additional period. The PACT plea agreement contains a provision authorizing additional rehabilitation, although it is doubtful many PACT participants anticipate this possibility. The final court disposition is the final contact of the control system with the PACT participant.

5.4 Evaluation of PACT

An evaluation of the PACT program is a difficult task in view of the nebulousness as to its exact nature and scope and the general nature of the goals which have been set for the program. The PACT program, according to the understanding of many Phoenixians, is synonymous with the ASAP program. In fact, the PACT program is but one major activity sponsored by the ASAP. This confusion posed some evaluative problems in determining exactly what various observers thought about PACT and its impact.

For the purpose of this assessment, PACT is considered to be the special plea-bargaining activity conducted in Phoenix since August 1974, which was designed to provide an expeditious and fair method of screening and referring DWI offenders into a short-term rehabilitation program with the inducement of a favorable plea bargain. It is not considered to include the alcohol rehabilitation programs per se, but is a referral source for such programs. The evaluation of PACT should not be dependent upon the effectiveness of the short-term rehabilitation programs to which it is linked. PACT as a referral mechanism can channel DWI offenders into any type of program for changing undesirable drinking-driving behavior, as long as the DWI offenders perceive the burden of the alternative sanction to be less onerous than the mandatory jail term and other repercussions of a DWI conviction. It is PACT which creates the opportunity to apply alternative sanctions; however, it is apparent that the evaluation of PACT is very much tied to the effectiveness of the network of resources to which DWI offenders are referred via PACT.

As the PACT concept became fully developed and its program goals more clear, the specific objectives to be achieved were refined and restated. As perceived by the Citizens Alcohol Safety Advisory Committee, when it undertook a review

of PACT after one year of operations, there were four objectives with which to measure its success:

- the implementation of a fair and equitable procedure for handling DWI plea bargaining, in contrast to the previously prevailing circumstances where defendants fared differently according to their ability to employ legal counsel and the tactics followed by such legal counsel;
- the establishment of a means for making available to citizens charged with DWI offenses, counseling, instructional and rehabilitation programs, and for testing the efficacy of such programs in preventing recurrence of DWI offenses by such persons;
- the standardization of procedures for handling high volumes of DWI cases with the relatively limited facilities available in the City Prosecutor's office and in the Municipal Courts; and
- the implementation of policies incorporated in State laws by requiring trial of DWI offense charges in the cases of repeat or chronic DWI offenders and enhancing the effect of such trials in the Municipal Court, by making them trials of record, thereby precluding de novo appeals to the Superior Court.

Fairness. One of the major criticisms of the prior system of handling cases was the disparity in treatment of DWI offenders depending on the presence of defense counsel. Those offenders who had private counsel were more likely to receive a plea bargain and avoid the consequences of a DWI conviction. Those without counsel were less able to manipulate the system to achieve the most favorable outcome for themselves. Plea bargaining has traditionally been an activity of negotiation between attorneys: the prosecutor and defense counsel. Similarly situated defendants, those with comparable violations and prior records, were allegedly not being accorded the same case resolution opportunities.

There are no data to substantiate the claim of discriminatory treatment based on attorney presence; but it seemed to have been common knowledge among all criminal justice system personnel interviewed and was not seriously disputed by anyone. There is no doubt that PACT is fair, however, if fairness is consistency and uniformity of treatment by the system. DWI offenders appearing for arraignment were encouraged by the judge to plead not-guilty to allow them an opportunity to enter PACT. The not-guilty plea rate rose from 75% in 1973 to 99.3% in 1975. Those who

pleaded guilty to the original charge were certain to receive a one-day jail term, while offenders pleading not guilty, often upon advice of counsel, had a good chance to avoid a DWI conviction.

All DWI offenders who had not previously been through PACT were treated as first-time offenders for the purpose of determining PACT eligibility. A PACT plea bargain was offered to 88.3% of all DWI offenders.²⁴ Reasons for denying the PACT offer included such factors as the nonresidency status of the offender and the occurrence of a second DWI after prior involvement with PACT. In any event, there was a high PACT offer rate, indicating equal opportunity for DWI offenders.

Even though the PACT program has afforded greater fairness in the disposition of DWI cases, it has been criticized for certain inequities which it has created. The PACT program is available only in Phoenix, and DWI offenders arrested in other parts of Maricopa County or the state are not able to participate in a charge-reduction program. In many areas, the one-day jail term policy is strictly enforced by vigorous prosecution and mandatory jail sentencing. Some attorneys have claimed that this program created a situation whereby DWI offenders arrested outside Phoenix are denied "equal protection of the law."

Another charge of unfairness refers to the policy of random assignment to rehabilitation, with a limited number of offenders being assigned to control groups where only minimal treatment is provided. Attorneys have claimed that this unfairly denies needed treatment to their clients. Another allegedly unfair situation created by PACT is the removal of plea-bargaining discretion from the individual prosecutors in favor of a general policy applicable in all DWI cases. None of these charges seems to have substantial validity or relevance concerning the overall evaluation of the fairness of the PACT process. The system does provide equal plea-bargaining opportunity for all within the jurisdiction of this program.

Referral Effectiveness. PACT has provided a means to secure participation of DWI offenders, to classify them by drinker type, and to refer them to appropriate short-term rehabilitation modalities. The ability of the PACT program to provide a screening activity for determining the nature of an offender's drinking problem, and to thereby ensure

24. Based on reported dispositions as of June 1976, of DWI cases arraigned between August 1974, and December, 1975.

appropriate referral has been demonstrated. All individuals going through PACT receive a screening examination to determine drinker type. In fact, 72.7% of all DWI offenders arrested in 1975 received some type of drinking diagnosis or screening, compared with 30.4% in 1973, the last full year preceding the start of PACT operations.

Through December 1975, the PACT program experienced a 96.6% acceptance rate of 8,551 offenders who had been offered PACT. Some type of rehabilitative program assignment was made for 97.2% of those entering the PACT program, while the remainder had already been assigned because of previous DWI charges. Those who were not offered PACT or who had rejected the PACT offer were much less likely to enter rehabilitation programs: 16.4% of those who were denied PACT and 10.4% of those who had rejected it.

The success of PACT as a referral technique is demonstrated by the four-year experience of referrals to rehabilitation. In 1972, 56% of the DWI offenders arraigned were ultimately referred to a rehabilitative program; 47.2% in 1973; 59% in 1974; and 81.7% in 1975. The 1975 rate shows the impact of a full year of PACT program operation. As a referral method, the PACT procedure has been an undeniable success in linking large numbers of drinking drivers with counseling, instructional, and rehabilitative programs.

With the institution of an experimental design to evaluate the effectiveness of the short-term rehabilitation programs to which PACT refers clients, another objective of the PACT program was met; however, as noted earlier, this evaluation should not be construed as an indication of the effectiveness of PACT itself. A random assignment plan using control groups was implemented from April through December 1975. Final results of this short-term rehabilitation evaluation will be available in 1977.

Efficiency and Standardization of Procedures. The efficiency or speed with which the PACT program processed cases through the system was compared with the efficiency of pre-PACT processing. ASAP evaluators found that the average lapse in time from DWI arraignment to rehabilitation referral decreased under PACT. Referrals were made 71% faster after PACT, with 62.6% of all PACT rehabilitation referrals accomplished within three weeks, as compared to 13.5% under the previous system. Ninety-six percent of PACT referrals were completed within two months; only 56.4% of pre-PACT cases were.

Total average processing time from DWI arrest date until final disposition was also quicker under PACT. The prior system, which had a higher guilty plea rate at arraignment, was able within one month to process to final conclusion a greater volume of cases than under PACT (24.3% vs. 3.5%). Over time, however, PACT was a more efficient method. Within six months after arrest, 93.2% of all post-PACT DWI offenses were processed to conclusion, compared to 74.5% for the pre-PACT procedure. Mean time to final disposition was 96 days post-PACT; 134 days pre-PACT. In addition, the mean elapsed time from arrest to final disposition for PACT program participation vs. cases going to trial was less for PACT (97 days) than for trial cases (103 days).

A major problem confronting the drinking-driver control system in 1973-74 was the large backlog of cases scheduled for trial, especially jury trials. During 1974, the City Court jury trial backlog decreased from 508 to 160; however, most of this reduction occurred prior to the start of PACT in August and must be attributed to the pre-PACT plea-bargaining activity of the City Prosecutor's staff. In 1975, the first full year of PACT, the jury trial backlog increased to a manageable 193 cases.

The volume of pending Superior Court DWI cases appealed from City Court decreased from 641 in 1973, to 304 in 1974, and finally to 9 in 1975. This reduction can be attributed to a combination of the change of eliminating trials de novo at the Superior Court level and the effect of PACT in decreasing the number of appealable cases through the earned plea-bargain process.

The PACT program is a plea-bargain-based activity in which operational responsibility is divided among the prosecutor and the court. Because of the historical role of the Chief Presiding Judge in the creation of the PACT, the Court played a rather untraditional role in the process. A judge was involved in acknowledgment of the PACT plea bargain at the pretrial conference held before the offender commenced participation in the program. At the disposition hearing, the judge determined, upon receipt of an oral report from the prosecutor, if there had been substantial compliance with the terms of the PACT agreement. At the so-called "Problem Court" the Chief Presiding Judge determined if any violations of the terms of the plea agreement were substantial enough to require the case to be set for trial. It is unusual to have this much judicial intervention into a plea-bargain program. Some judges and many prosecutors expressed concern about this excessive involvement. Because of the judicial involvement, the program was not designed to operate

with maximum efficiency. Compromises were made to ensure that the program was subject to the control of key parties outside the prosecution process (e.g., the Chief Presiding Judge). A pure plea-bargain diversionary program would not have involved as many time-consuming court dates. It is concluded that the system operated more efficiently than its predecessor, but not as efficiently as it could have due to its design, which ensured judicial intervention. PACT operated with remarkable efficiency despite the system design flaws.

The system procedures, forms, and policies were documented and subscribed to by participating system agencies. Cooperation between the ASAP staff, the Rehabilitation-Probation Center management, and the City Prosecutor resulted in continuing efforts to further streamline and improve system operations, especially during 1975, after the initial quirks and inefficiencies were identified and solved.

Elimination of Trial de Novo. The effort to eliminate the illogical system of allowing trial de novo upon appeal of a DWI case to Superior Court has been described previously. The necessary funds to initiate a court-reporter system were obtained in 1975. The system became fully operational July 1, 1975, and has eliminated trial de novo problems. Trials are now being recorded on a regular basis in City Court.

Further evaluative information on the performance of the PACT program can be found in the evaluation reports produced by the Phoenix Alcohol Safety Action Project, particularly Analytic Study IV, An Analysis of Judicial System Performance (1975), from which much of the data used in this analysis was obtained.

6.0 ATTITUDES TOWARD THE PACT PROGRAM

During the process of collecting information on the history of change in the Phoenix drinking-driver control program, an effort was made to determine the attitudes of the personnel involved in the program or "system," the clients or target group for the program--the DWI offenders, and the general public. By assessing these attitudes, it was hoped that there would be a greater understanding of what the dynamics of program change were in the conception, development, and sustaining of the PACT program; what impact the program would have on the effectiveness, efficiency, and fairness of the control system; and lastly, what the probability was that the PACT program would be permanent or, would endure in some form.

No attempt was made to solicit attitudinal information through a scientific sampling of the opinions of system personnel, offenders, or the public. Time and financial constraints precluded such an elaborate procedure. The study team sought and received information from a broad cross-section of sources. Greater emphasis was placed on system sources since the insiders were the major source of information on the description of the local system and its history of change. The reactions of the DWI clientele were determined through anecdotal reports from system participants (such as judges, PACT counselors, and alcohol treatment personnel) and a review of the evaluative literature prepared by the ASAP staff. Public opinion was assessed by review of newspaper reports or editorials and reports of the Citizens Alcohol Safety Advisory Committee (including an interview with its chairman).

The attitudes reported here are impressions of the study team gained through personal interviews and discussions conducted in March 1975, approximately seven months after the initiation of the PACT program. It is felt that the accuracy of these impressions was enhanced by the familiarity of the study team with the Phoenix system. As reported previously, the team had continuing contact and involvement with the program from 1973 through early 1976; however, the tendency toward bias may also have increased because of the close relationship of the study team with the ASAP staff. The interviews in March 1975 were not the first with many of the subjects. This experience permitted a more efficient and insightful interview regimen. Through this process, the team attempted to determine what the prevalence of expressed attitudes may have been, the probable intensity with which they were held, and the apparent trend of attitudes toward the PACT program. The impressions of these attitudes are presented.

6.1 System Actor Attitudes

Legislative Attitudes. The Arizona state legislature in the past has supported the enactment of traditional drinking-driver control measures. The state has much of the nationally recommended statutory law considered desirable for an effective control program, e.g., implied consent law, .10% BAC presumptive level law, license withdrawal or restriction for convicted drinking-drivers, and authorization of the use of educational and treatment programs by the courts and motor vehicle department in dealing with these drivers. In 1972, the legislature attempted to provide additional deterrence value to the DWI law by adding a mandatory one-day jail sentence for first-offense DWI and sixty days for a second offense within twenty-four months. The approach may be characterized as traditional, hard-line, and deterrence-oriented.

When the Phoenix city administration implemented the quasi-diversionary PACT program, which is based upon large-scale plea bargaining, there was some disapproval expressed by members of the state legislature. One such source was a key legislative committee chairman whose committee is responsible for review and recommendation of legislation in the highway-safety and court areas. His attitude is illustrative of the ambivalence that characterizes many other observers and actors within the Phoenix control system. The PACT program, which he viewed as a creation of the Chief Presiding Judge of the City Court, operates in blatant disregard for the requirements of state law (i.e., avoiding legislative policy to impose a minimum jail sentence). The remainder of his fifteen-member committee, he thought, also disapproved of the Phoenix "deal" (his term) system. He felt that the members of the state legislature believed in the deterrence value of the jail-time provision upon the individual offender and the general public. It was his belief that the general public desires even more stringent measures against drinking-driving offenses. Although attempts have been made to eliminate the mandatory sentence provision, they have been unsuccessful to date.

This legislator viewed the PACT program as misaimed, unnecessary, and unfair. It was his view that most of the offenders getting the PACT offer were those with the highest recidivism rate, although the basis for this belief was unclear. If the Superior Court judges would hear DWI appeals from City Court, the caseload problem would be ameliorated. Of particular concern to the legislature, according to this source, is the unfairness perceived in applying a lenient plea-bargaining program in Phoenix, while offenders in the remainder of the state must incur the intended penalty of the law--mandatory jail time.

Despite these objections to the PACT program, he recognized that the Phoenix system had no choice if it was to continue to function as a viable processing system within the time constraints of the ninety-day speedy trial rule. In fact, he indicated he would not oppose repeal of the one-day jail penalty in the future. In sum, it appears that at least one important member of the state legislature feels that the PACT program is not appropriate or fair, but a "necessary evil," being an efficient processing procedure. The legislature will likely retain the mandatory one-day penalty for its perceived deterrence value, but will monitor the Phoenix PACT program experience to ascertain the effectiveness of its educational and treatment programs for drinking-drivers without incarceration. Through the end of 1975, there had been no change in the mandatory jail-time requirement, despite efforts by the Phoenix city administration to amend the law.

Police Attitudes. The attitude of Phoenix police officers toward the ASAP may be generalized as one of ambivalence; on the one hand, the police officers interviewed expressed a universal philosophical objection to the concept of diversionary justice, and on the other hand admitted a grudging admiration for the efficiency (if not the effectiveness) of the PACT operating system. The attitudinal dichotomy was expressed by officers at all levels, from the patrolmen on the street to the office of the chief.

Police management, including the chief, has generally been supportive of the ASAP program and was receptive to the change in case disposition policy represented by the PACT program. The Phoenix Police Department has conducted an energetic DWI enforcement effort, particularly the special ten-man motorcycle patrol.

One high-ranking Phoenix Police Department source was very complimentary about the PACT program. From the standpoint of departmental management, the program has been very helpful. The efficiency achieved by reducing the need for in-court appearances by officers has resulted in a significant decrease in officer court time. This allows savings in overtime costs for police officers to testify. The problem had been, as this officer viewed it, a "sloppy system" (court system) with "lazy people" and "high volume." The PACT program is a reasonable way of handling the caseload, particularly since many of these cases would have been plea bargained anyway.

One other Phoenix Police Department captain noted that the patrol officers do not like the PACT program from a "gut reaction" viewpoint; however, they dislike PACT less than the previous disorganized method of handling cases. The

critical factor in line officer support will be the number of repeat offenders being apprehended and the prosecution and court handling of these DWI violators who have been through the PACT program once.

A captain in the traffic division of the Phoenix Police Department thought that the operation of the PACT program served to thwart the legislative intent by letting guilty DWI offenders avoid the consequences of their crime. He felt that the proper response to the caseload problem was to increase resources for the courts and the prosecutor. The blame for failure to provide the needed personnel belonged to the City Council. Despite general philosophical objections to PACT, the officer observed that police officers believe PACT to be a fair system; even though no one gets punished for a DWI violation, everybody gets treated equally. Police do not object to treatment programs for DWI offenders who have drinking problems; they remain skeptical, however, waiting for evidence of some success. The absence of an indication of a drinking-driving offense on the driver license record for PACT cases was also condemned.

The traffic captain raised another complaint heard elsewhere in the department about the perceived exclusion of the police in the process of seeking solutions to the caseload problems and the eventual development of the PACT alternative. He neglected to mention the police investigation of the prosecutors and the courts which was in progress about the time the PACT program was conceived and developed.

The police seemed to give the ASAP and the PACT program an overall positive evaluation. They were pleased that a large number of drinking drivers are being identified and that some of those drivers now acknowledge that they have a drinking problem. Many officers have seen at least short-term successes in rehabilitating persons they have arrested. The general police attitude is that the most important function is the enforcement function, to identify the DWI and get him off the street. In general, however, the police did not see the level of success in rehabilitation claimed by the ASAP, but they did believe that in some instances the ASAP program, through PACT and the short-term rehabilitation, had changed the behavior of drivers and had increased the public awareness of the DWI problem.

A number of motorcycle patrolmen assigned to the special DWI enforcement squad were interviewed and reiterated the viewpoints expressed by their superiors. They complained about the leniency of the PACT procedure, but admired its efficiency and reserved final judgement pending evaluation of the rehabilitative efforts. These officers, when interviewed and observed in a group setting, maintained a stern,

hard-line attitude toward DWI enforcement and the futility of coddling, "do-gooder" programs like ASAP. When quizzed alone or with another officer, another attitude was manifested, recognizing the police role as a member of a larger team with the common objective to reduce future unlawful drinking-driving behavior. They were quite willing to give the PACT program a chance. Even though they welcomed reduced in-court time on an overtime basis, it was apparent that the officers had become accustomed to receiving the additional overtime pay.

Despite the skepticism, despite the philosophical objections, despite the real or imagined slights of the police by the rest of the system, the morale of the special DWI motorcycle patrolmen was high. They viewed themselves as an elite group of high competence, making a major contribution to the safety of the citizens of Phoenix. In this perception they seemed justified. In the words of one ASAP patrolman, "My job is to make DWI arrests. Whatever happens to the defendant after that is out of my hands, but at least I got him off the road."

In general, Phoenix police voiced a conservative, traditionalist view of the criminal law, but viewed the PACT program with toleration as an efficient means of processing cases even though it is at the cost of permitting violators to escape the consequences of their criminal behavior.

Members of the Arizona Department of Public Safety, which provides DWI enforcement on interstate highways within the city limits, share the ambivalence which characterized the attitudes of the Phoenix City Police personnel. One sergeant who had worked closely with the ASAP praised the PACT program. It succeeded in keeping the highway patrolmen out of court and eliminated the wasted time involved in scheduling for court appearances under the prior system. He saw a value in using the criminal justice system to channel DWI offenders into alcohol treatment programs. His impression was that DPS patrolmen in general felt the program was much better and fairer than before. The sergeant did not think that the PACT program was circumventing the intent of the legislature. It was the best alternative available at the time; although, some misgiving was expressed at the failure to have some notation on the license that a DWI had been reduced to a lesser charge. Accurate recordkeeping to ensure ineligible offenders are not allowed into the program is vital. The Department of Public Safety, he said, was behind the ASAP program and PACT.

This rosy assessment was not universal, however. During 1975 DPS patrolmen became very dissatisfied with City Court scheduling practices, since these officers were required to appear in court on their free time without pay. This disenchantment, coupled with the objection of many officers to the PACT program itself, has resulted in DPS arrests for DWI being filed in Justice of the Peace Courts in the county.²⁵ It appears, therefore, that the DPS officers' attitudes are mixed, and that feelings toward City Court scheduling has resulted in use of a more convenient and cooperative forum. The direction, prevalence, and intensity of DPS attitudes toward PACT at the end of 1975 were uncertain.

Prosecution Attitudes. During the first two-and-one-half years of the ASAP, the role of the prosecutor in the drinking-driver control program was legalistically defined by the top-level administrators in the Law Department, including the City Attorney and his assistants who served as City Prosecutor in charge of criminal prosecutions in City Court. These administrators were willing to accept ASAP funding support to increase prosecution staff for traditional trial-oriented processing, but were not willing to conform plea-bargaining policy and practice to include a regular requirement of participation in a short-term alcohol rehabilitation program sponsored by the ASAP. In 1973 a larger number of cases began to be resolved through plea negotiation. According to prosecution sources, the plea-bargaining, however, involved simply the negotiation of the charge to be pleaded to and not a requirement or recommendation as to a rehabilitative disposition, such as participation in an alcohol treatment program. It was nonetheless understood that only a fine would result from the reduced charge. The City Attorney and the regular prosecution staff did not believe that involvement in the determination of sentence was a function of the prosecutor, but rather was solely a court function. As a result of this general attitude, it was necessary to implement the so-called "prosecution-based" PACT program without the endorsement of the agency responsible for much of its administration.

The City Attorney was originally skeptical of the efficacy of the ASAP approach involving educational and treatment alternatives; he remained so at the time of introduction of the PACT program. Prosecutors were not encouraged by the City Attorney to include a treatment/education requirement as a regular part of a plea bargain. A request by the ASAP Director to change this policy was declined.

25. Phoenix Alcohol Safety Action Project, Analytic Study IV, An Analysis of Judicial System Performance, (1975), p. 10.

When the idea for a diversionary program for drinking-drivers was first considered in 1973, the Chief ASAP Prosecutor (who was funded by the ASAP but responsible to the City Attorney and his City Prosecutor) was not permitted to develop the concept further for possible implementation by the City Prosecutor's staff. When the diversionary approach was reconsidered at the 1973 Judicial Seminar and approval given by the Intergovernmental Programs Administrator for the ASAP staff and the Chief ASAP Prosecutor to develop a proposal for a diversion program, the City Attorney was not consulted nor given an opportunity to abort the development of the proposal. When the new Chief Presiding Judge of the City Court assumed office in January 1974, he took major responsibility for advocating the diversionary proposal as a joint court-prosecutor program. A bandwagon effect of sorts resulted in generating support for and approval of the PACT program, with City Council approval, first given tentatively in April 1974 and finally in June of that year, effectively precluding any effective opposition by the City Attorney or his staff to the implementation of the new program.

The City Attorney consistently maintained a skeptical attitude toward the ASAP program and any modification in traditional prosecution procedures to achieve referral of DWI offenders into alcohol education or treatment activities. He did, however, recognize that the ultimate evaluation of the success of PACT may well be determined by the effectiveness of the rehabilitation countermeasures utilized. He knew that plea bargaining had been used effectively by prosecution agencies in the past to regulate caseload pressures; the appropriateness of its use as a referral mechanism for public-health and social-service programs was doubted. He indicated he would maintain a "wait-and-see" attitude toward PACT and toward the ASAP during its two-year continuation period through 1976.

The policies of the City Prosecutor reflect the attitude of his department head, the City Attorney. These policies of the City Prosecutor have been directed to the requirements for processing cases through the judicial system toward the objective of conviction. Plea-bargaining policy nominally is based on the probability of securing conviction and the desirability of prosecuting any particular charge. Although the state legislature changed the presumptive level law from .15% to .10%, the plea-bargaining policy prior to PACT reflected the .15% presumptive level philosophy by allowing reduced charges for DWI cases with a BAC of .16% and below. Prior to PACT, therefore, the City Prosecutors felt the role of their office to be a traditional conviction-oriented role, with plea bargaining restricted to charge-determination rather

than disposition. The City Prosecutors' attitude toward the ASAP program was one of passive toleration and skepticism.

When the PACT program began to evolve, the City Prosecutor tacitly delegated responsibility for prosecution involvement to the Chief ASAP Prosecutor, who was more intimately and actively engaged in the planning process. There was little interest in the program per se, but it was recognized that an effective caseload diversion device would be beneficial to the City Prosecutor's office. The procedures developed for prosecutor involvement presumed little active involvement by the regular prosecutors; only the special ASAP (or PACT) prosecutors would be involved during the non-trial phase. The regular prosecutors would become involved only in cases which went to trial for any reason.

The regular City Prosecutor's (Criminal Division) staff, predominantly comprised of young attorneys, approach their jobs as prosecutors in a traditional, conviction-oriented manner. Concerned with legalisms and the evidential fine points of the law, they handled a heavy, assigned caseload and disposed of cases with considerable discretion within the general formal and informal guidelines of the office. DWI case plea bargaining was a major function of the staff during 1973 and 1974, with trial work an infrequent occurrence. There was no particular motivation for or interest in referring DWI offenders to alcohol education or treatment; in fact, it was considered beyond their capability and role to do so.

At the Prosecutors' Seminar in July 1974 the regular staff only weakly endorsed the PACT program, perhaps primarily for personal reasons, since reduced regular staff involvement in handling DWI cases was envisioned in the original PACT concept. Despite the protestations of one or two prosecutors who resolutely defended the traditional case-by-case, discretionary plea-bargaining approach, the City Prosecutor's staff accepted the PACT approach, then worked out general operating guidelines, and agreed to the need for prosecuting PACT refusers and drop-outs, regardless of BAC level.

After the operation of PACT for seven months, a generally positive reaction by the City Prosecutor's staff toward PACT prevailed, despite some specific complaints about processing inefficiencies by the special PACT prosecutors and clerical staff responsible for handling the DWI cases. The reduction in jury-trial requests seemed to impress even the pre-PACT system defenders.

A new City Prosecutor, appointed in early 1975, was assigned responsibility by the City Attorney to assume administrative control of the prosecution portion of PACT processing. The tasks of the Chief ASAP Prosecutor (now called PACT attorney) were integrated into the operational routine of the City Prosecutor's office, and processing procedures and guidelines were revised and published in cooperation with the other system agencies involved in the PACT program. This City Prosecutor felt committed to make the processing system work efficiently. He was less committed, however, to the educational and rehabilitative goals of the total drinking-driver control system effort as accepted by the ASAP staff and Chief Presiding Judge. He recognized the value of the PACT operation--its caseload reduction impact and its function as an intake point into alcohol rehabilitation programs. He, as well as other prosecutors, felt that the problem (i.e., caseload pressure) could be solved with an increase in system resources (personnel and courtrooms), and the deterrent value of the jail-time feature of the DWI law thereby maintained. He noted that large-scale infusion of resources would be needed to achieve these traditional objectives.

The new City Prosecutor thought the system operated unfairly in treating occasional situational drinking-drivers the same as regular drinking-drivers. Overall, the City Prosecutor held ambivalent feelings toward PACT as others have, but expressed commitment to making the processing system work efficiently, including timely referrals to the drinker-assistance programs. He felt the need for greater efficiency resulted from exclusion of the City Prosecutor's office (other than the Chief ASAP Prosecutor) from initial planning and procedures design. In March 1975 he was apprehensive about the possible backlash in the fall of 1975 when repeat offenders began reentering the system. He thought the quantity of repeat offenders might well determine further endorsement of PACT by many within the City Prosecutor's office. In December 1975 he appeared pleased by the moderate recidivism rate and the high guilty plea rate for these DWI repeaters.

The Chief ASAP Prosecutor was the creator of the PACT program in Phoenix. His idea for a prearrest diversion program for drinking-drivers was the basis for the ultimate PACT design. Operating as an ASAP-funded liaison between the ASAP staff and the City Court and Prosecutor's Office, this individual enjoyed considerable freedom in the conduct of his duties as a member of the City Prosecutor's staff. There was some personal animosity toward the Chief ASAP Prosecutor, resulting from personal conflict and envy of his status and freedom, which caused some difficulty in getting his diversionary proposal accepted by his peers.

He was, however, an enthusiastic advocate for the ASAP concept since the inception of the program and enjoyed the satisfaction of developing the controversial but innovative PACT program. He became somewhat disillusioned during the operational phase of PACT due to what he perceived as a lack of sufficient funding and personnel. Nevertheless, he remained an important proponent of the PACT program in Phoenix.

The Chief ASAP Prosecutor noted what he perceived to be the major benefits and problems of the PACT program. On the positive side, police overtime was eliminated; there was a reduction in the need for juries; there was guaranteed revenue in the form of a standard fine (\$110) imposed in each case; regular rehabilitation fees (\$35) would be collected in each case and would support operation of the rehabilitation programs; no jail costs would be incurred since no one would be sentenced to the one-day mandatory term (but then no one was being incarcerated anyway); there would be no need to expand court facilities to accommodate the increasing caseload; and the backlog problem was resolved. Not only would there be savings by reducing the need for certain costs, but the system itself ensured a regular flow of revenue. Problems with the system were seen to be the ethical propriety of PACT case coordinators presenting the actual plea-bargain offer to DWI offenders, the considerable loss of income to the defense bar, and the understanding of the PACT operation itself.

The attitudes of the City Attorney and the City Prosecutor and his staff have been interesting during the course of the conception, development, and operation of the PACT program. Initially, the City Attorney resisted prosecution involvement in regularly attaching to any plea bargain in a DWI case a requirement to participate in alcohol education or treatment. He remained consistent in this attitude throughout his tenure (which ended in April 1976). He was required to operate a rehabilitation-oriented plea-bargaining program (PACT) because the concept had been approved at the City-Manager level of the Phoenix city administration and subsequently by the City Council. After initial delegation of responsibility for administration of the plea-bargaining component of PACT to the Chief ASAP Prosecutor (who operated independently of the regular City Prosecutor), he exercised his authority over this activity in early January 1975 by requiring his new City Prosecutor to take operational control over PACT and to manage the PACT program in an efficient manner.

The reasons for the City Attorney's attitudes toward PACT, and earlier toward the ASAP, are not known with any certainty. There are several plausible explanations for his posture. For one, he did not agree with the ASAP philosophy of adding educational and treatment alternatives to traditional sanctions. Second, he viewed the prosecutor's role as one of seeking convictions and the judge's role to impose sentence. Third, cooperation and participation threatened loss of autonomy and authority over his prosecution functions. Fourth, the City Attorney's personal relations with ASAP staff and other system personnel hampered meaningful cooperation. It appears reasonable that a combination of these philosophical and personal considerations contributed to his approach toward rehabilitation-oriented plea bargaining.

The attitudes of the City Prosecutors and staff have varied during the development and operation of the PACT. Reflecting the City Attorney's standard approach to plea bargaining, the City Prosecutor (there have been three during the study period) and staff, according to prosecution sources, were content to engage in traditional charge bargaining and to leave final sentence determination to the judges (although it has always seemed unbelievable that no sentence bargaining was undertaken). In fact, the major prosecution activity during 1973 and 1974 until the commencement of the PACT program was to conduct plea bargaining. Since the City Attorney was unenthusiastic about the PACT-type program, the staff was not included in the development of the PACT approach and procedures. In July 1974, when the proposed PACT program was presented for their review, there was some resistance because of lack of prosecutor (other than the Chief ASAP Prosecutor) involvement in the planning stage.

The program was also faulted by prosecution staff for removing discretion (and power) from the prosecutor in the handling of individual cases. Justice, some said, results from case-by-case individualization of treatment and resulting plea bargain. Nevertheless, the program was recognized as a potentially effective method of removing much of the caseload burden from the regular prosecutors. The proposal, as conceived initially, freed regular prosecutors from routine PACT activities. Only if the DWI offender went to trial for any reason were the regular prosecutors to be involved. This was an effective selling point; the regular prosecutors accepted the PACT approach (although there was no real choice open to them). When the in-court appearances required of the PACT attorneys could not be managed as originally planned, and regular prosecutors were required to handle PACT court sessions and disposition sessions, the regular prosecutors were disgruntled temporarily and somewhat negative toward the PACT program.

The City Prosecutor and staff recognized that the PACT program has worked. The number of trials was reduced significantly, freeing the prosecutors for other activities. The procedure for handling DWI cases had become an efficient procedure through routinization. An important point to the prosecutors was the fact that the volume of repeaters in 1975 was not as high as had been anticipated by some, and most of these cases were resolved by guilty plea to the DWI charge. Even though processing problems remained and new problems would arise in the future, the PACT procedures were institutionalized in the City Prosecutor's office routine. The staff accepted the value of the program; attitudes toward PACT became and remained quite favorable.

Judicial Attitudes. Most of the judges of the City Court, including the Chief Presiding Judge, have been supporters of the ASAP program and its related activities since its inception in 1972. The then Chief Presiding Judge had received national acclaim for the special educational school he had helped to establish in 1966 for drinking-driving offenders. This DWI School continued to play an important role in the local control system during the early ASAP years. Despite variations in sentencing practices among the judges, large numbers of referrals were made to this school. The judges generally cooperated with other diagnosis-referral-and-treatment services available through ASAP funding or facilitation. Even though the large majority of City Court judges were cooperative participants in the drinking-driver programs, the increasing DWI caseload which occurred through intensive enforcement, changes in the law, and attorney practices resulted in less and less judicial involvement in case dispositions. The plea-bargaining activities of the prosecutors preempted the normal sentencing prerogatives of the judges. Consequently, fewer and fewer DWI offenders were referred to available education and treatment programs for DWI offenders. It was in this climate of decreasing judicial involvement that PACT originated.

The Chief Presiding Judge who was appointed in January 1974 became an immediate and enthusiastic advocate of the ASAP program and the PACT approach. He saw PACT as an opportunity for the court-prosecutor system to achieve its basic objective, which he perceived to be drinking-driver crash prevention, by application of appropriate sanctions and change of drinking behavior by education and rehabilitation. He noted the not-so-incidental importance of revenue collection in selling a program like PACT to the city administration, particularly the City Council. He felt that court involvement in any program such as PACT was crucial to its success and actively participated in PACT planning along

with the Chief ASAP Prosecutor and the ASAP staff. His advocacy for PACT, both within the system and to the city administration, was instrumental in its adoption. During the operational phase he continued his extensive involvement in the PACT program and continued to have considerable influence on the determination of PACT policies.

The Chief Presiding Judge rated the PACT system highly in achieving system efficiency, in being administered fairly, and in providing the potential for evaluating the effectiveness of differential dispositions. He did observe that some inefficiencies had arisen. To him the prospects for continuation of the PACT approach in the future appeared good.

The other City Court judges supported the program, with perhaps two exceptions. One defender of the prior processing procedure regarded the minimum jail time as necessary to instill respect for the law and to prevent recidivism. He begrudgingly admitted that the PACT system had remedied the appeal problem and that the requirement that the plea bargain be earned was instrumental in keeping offenders in the education or treatment programs. Another of the judges felt the judicial involvement in the program (approving plea bargains and determining compliance with the bargain) was an encroachment upon prosecutor discretionary authority and should be discontinued. He observed that there were other problems with PACT, e.g., processing snafus and the dilemma of the individual with a low BAC in deciding whether to accept PACT or to seek acquittal.

The remainder of the judges praised the PACT program for its results. Although the judges have only perfunctory duties in the PACT pretrial court sessions and in the disposition or sentencing hearings, they felt more satisfied to see offenders directed to appropriate programs and completing them satisfactorily. Even in supporting the programs, the judges remained concerned about the ultimate impact of the education and treatment programs in reducing drinking-driver recidivism and promised to closely monitor the evaluative results.

The Chief Presiding Judge of the Maricopa County Superior Court seemed a strong supporter of the PACT program. His court had been briefed by the ASAP director on the nature and objectives of the ASAP and PACT program. The information presented at this meeting and the impact PACT had exhibited in lessening appeals to Superior Court impressed the Chief Presiding Judge. His judges had not previously accorded much priority to DWI appeals from the Phoenix City Court; in fact, plea bargaining was encouraged

because of the obvious disinclination of the Superior Court judges to hear these "minor" cases. Any program which reduced the de novo appeal caseload, particularly undesirable cases, would be warmly accepted by the Superior Court judges.

The probation personnel of the City Court, including the Probation Supervisor and the DWI Probation Supervisor, saw positive results with PACT. Furthermore, they were encouraged by its success. The acceptance of PACT, according to the probation personnel, represented an acceptance of rehabilitative tools, by the judicial system at least. PACT was seen as a timely, fair (equal opportunity for all), efficient, and effective case-finding and referral mechanism. Its ultimate continuation will depend upon the continued support of key system personnel (e.g., Chief Presiding Judge of City Court), economic considerations, and the results of the rehabilitation program in affecting drinking-driving behavior.

Defense Bar Attitudes. The opinions of both private and public defense counsel were sought. Representatives of the local defense bar and the Maricopa County Public Defender's Office were obtained. The attitudes expressed by these lawyers seemed reasonably consistent and remarkably similar to police attitudes. They would prefer the traditional criminal justice system methodology for processing cases, but admitted that the PACT program is an efficient and reasonably effective means of processing the caseload.

While all the lawyers generally agreed that PACT is an efficient means of processing cases, they also generally objected to the mechanical, dehumanized nature of the selection process. One private attorney reported that his firm no longer accepts DWI cases, instead advising clients that they need not retain counsel since everyone is processed the same way. He also reported personal knowledge of some private counsel who charge as much as \$400 to represent clients eligible for a PACT bargain. He viewed this charge as unethical because, as he said, "The lawyer literally has nothing to do in the PACT program except stand next to his client." Another lawyer reported that he reduced his fee from the former \$500 down to \$200 to represent clients through PACT, "because there really isn't much work to do." Two of the public defenders also complained that they felt "cut out" of the system because there was nothing for them to do for the client under PACT--the plea bargain offered is simply too good to refuse. Accordingly, the bulk of DWI cases can be disposed of by the PACT program without the need for services of defense counsel.

All of the interviewed defense lawyers questioned the effectiveness of the PACT program. One lawyer complained that negotiating with the PACT attorney was discouraging because he engaged in "merely mechanical bargaining." One lawyer felt the PACT system was a "farce" which could be subverted by anyone of normal intelligence by fooling the PACT case counselors into a "social drinker" diagnosis. This same lawyer objected to "arbitrary" distinctions between social and problem drinkers based on a point score resulting from a diagnostic questionnaire. One lawyer found the PACT program somewhat objectionable because young people "have no respect for the law or the police when they know they can get away with one free violation" as a result of the automatic plea bargain. Most of the interviewed lawyers reported that many lawyers, particularly young practitioners, have complained about a loss of business due to the PACT program.

Complaints were heard about specific aspects of the program effectiveness and efficiency. A public defender identified two severe handicaps of the PACT program: (1) recidivists are excluded from the PACT program and accordingly may not receive needed rehabilitation; and (2) problem drinkers who deny their problem will plead not guilty, then go to trial, and accordingly may not receive rehabilitation. Another attorney complained about sheer administrative inefficiency, e.g., orientation sessions "never start on time" and "frequently files are lost or late in being transported from one place to another." This same lawyer and two public defenders also reported that indigents often do not get admitted to the PACT program: "People who don't have the \$35 in cash go to trial." (PACT and ASAP staff denied the existence of such an exclusion policy.)

The lawyers universally felt that the system operated fairly in the sense that everybody was treated equally, but also that it operated unfairly in the sense that some people who belonged in rehabilitation were mechanically excluded from the program. None of the lawyers reported any systematic bias against ethnic minorities. One lawyer (who is a member of a well-respected Mexican-American family law firm and a leader in the Mexican-American community) indicated that there seemed to be no intentional ethnic discrimination. Virtually all indicated that there was discrimination against poor people; indigents seem to be intentionally excluded from PACT. The defense lawyers generally view PACT as too inflexible in both design and administration.

Many of the lawyers mentioned the inherent unfairness of allowing desirable plea bargains to people in Phoenix, but not to people in other parts of Maricopa county or the rest of the state. Small-town Arizona justice, where plea bargaining is absent, was considerably harsher than PACT.

Some lawyers were concerned about the constitutional problems inherent in selective prosecution, particularly if the selection is based on economic or social considerations rather than on the merits of the case. In any event, all of the lawyers viewed the PACT system as basically fair in the way it treated persons who were admitted to the bargain. The unfairness perceived seems to be in the manner and criteria of exclusions from the benefits of rehabilitation.

Despite the criticism, defense attorneys have accepted the PACT concept. Several lawyers suggested that they would be happier if PACT were to disappear, leaving flexible plea-bargaining ability in the hands of trial prosecutors. Two of the public defenders also indicated that their role in PACT was not psychologically rewarding, since the mechanical nature of the bargaining made them feel as if they were really not able to function as lawyers and serve their clients. But, in general, the defense bar seemed satisfied with PACT. PACT generally allowed them to achieve their goals for their client, namely, (1) to keep him out of jail, (2) to keep his driving license, and (3) to get rehabilitation services for his drinking problem. PACT seemed ideally suited for the vast majority of cases. Thus, the PACT program posed a serious threat to the Phoenix public and private defense bar, since the need for an attorney's services had been eliminated. In fact, the Chief Presiding Judge adopted a policy denying public defender services for indigent DWI offenders eligible for a PACT bargain. Since incarceration was not a possible outcome, the need for counsel, as required by the Argersinger rules, did not exist.

Motor Vehicle Department Attitudes. Arizona has only about a million and a half licensed drivers, and the state of development of the Department of Motor Vehicles' programs did not appear to be as advanced as in other, more populous states. The director of the driver licensing-driver improvement agency within the department indicated there was no real coordination with the ASAP. Similarly, a member of the ASAP staff had reported that the operations of the Department of Motor Vehicles remained "something of a mystery."

The director of the driver improvement agency reported little impact on the Department of Motor Vehicles caused by the PACT program. This was not surprising; virtually no one under PACT is convicted of DWI. Even for those convicted of DWI, license suspension is optional with the DMV for the first offense and only becomes mandatory with a second or subsequent conviction (which is administratively determined). The only overt relationship between the DMV and the ASAP is that the DMV permits City of Phoenix clerical personnel to enter the DMV during the night to do driver record checks for persons entering the PACT system.

Certain conflicts sometimes arise between DMV policy and PACT requirements. For example, persons who refuse the breath test and then enter PACT to avoid a license suspension end up having their license suspended by the DMV anyway, as Arizona law specifies that a driver who refuses a breath test will be automatically suspended. The PACT bargain is a charge reduction, and accordingly, the DMV suspends the license on the implied consent violation. DMV appeared to be an unimaginative bureaucracy which had no rehabilitative programs of its own and no real driver improvement effort. DMV attitudes must be characterized as those of a passive bureaucracy. An official of DMV reported, "Driver licensing doesn't care what local judges do with cases." They view the disposition of cases as within the judges' discretion and take action only when reported by the judge. The DMV personnel had no particular attitude about the PACT program.

Treatment/Rehabilitation Attitudes. The PACT program is based on the concept of screening and referral of DWI offenders according to the severity of their drinking problem. At the time of the interviews there were several levels of treatment or rehabilitation agencies relating to the PACT program. The most immediate were the educational and therapeutic agents who received large numbers of PACT referrals for their programs. Administrators and counselors or therapists with these organizations were very much aware of the PACT program, its objectives, operating procedures, and deficiencies. They were well disposed toward an activity which serves as an early case-finding device for referral into their programs. They were less concerned with the legalistic issues which concern police, prosecutors, and judges. The PACT program was seen as a source of undiminished flow of both occasional and chronic alcohol abusers, many of whom would be responsive to a therapeutic or educational intervention required as a condition for leniency in the legal disposition of a DWI offense. Since the creation of the Rehabilitation-Probation Center under the authority of the City Court, many of the most-used short-term rehabilitative services for DWI offenders have been integrated into this organization responsible for PACT screening and referral.

Alcohol treatment and rehabilitation agencies not included in the immediate, regular referral network knew less about the PACT program and many had not developed attitudes toward it one way or another. In late 1975 the ASAP director was planning a diagnosis and referral seminar for the longer-term community resources used for those DWI offenders with enduring problems requiring continuing care or assistance. The seminar was needed to dispel the misconception

that the PACT program and ASAP countermeasures simply provide alcohol-control training for drunk drivers. Some of these resource agencies have recognized the PACT diagnosis-referral capability and the short-term rehabilitation programs as major sources of problem-drinking clientele requiring their services.

In summary, the treatment and rehabilitation agencies viewed the PACT program as a valuable outreach tool for identification of alcohol abusers requiring educational or rehabilitative services.

State Highway Safety Office Attitudes. The Arizona Highway Safety Coordinator (formerly called the Governor's Representative for Highway Safety) and other officials in his office indicated that the state government strongly supported the Phoenix ASAP and the PACT program, both conceptually and operationally. He fully subscribed to the goal of getting people into programs that will help them. PACT and other programs have been productive in needed operations. The Coordinator and his staff had no apparent misgivings about the charge-reduction feature of the PACT program and were fully supportive of the entire process, viewing its creation as a major accomplishment of the ASAP.

City Council Attitudes. The seven-member City Council supported the PACT system, both in principle and with funding support. In 1974-75 one key attorney councilman had general responsibility generally for overseeing the court area, including funding requests. He was a supporter of the ASAP program and the PACT diversionary process, although he thought PACT might be unconstitutional. The only criticism he had heard about PACT was that it was circumventing the law. He felt that the City Council was generally committed to the PACT program and that it would fund reasonable requests to support that program. The Council was influenced in its acceptance of PACT by the economic considerations. The PACT program promised to decrease the number of appeals to Superior Court, thus allowing the city to retain the fine money which otherwise would go to the county if the case were retried in Superior Court. The PACT program also would ensure an increased and regular receipt of fine money through the standard fine provision (\$110) in all PACT plea agreements. Thus, PACT appealed to the City Council because of the amount and certainty of fine revenue.

The City Council was also influenced by the inputs provided by the Intergovernmental Programs Administrator, who is the City Manager's liaison with the Council, and by the Chief Presiding Judge of the City Court. These three pro-PACT officials (including the attorney-councilman) provided the Council with the information it required to make decisions on court-prosecutor needs and programs. Another council member, who had been arrested for DWI, pleaded guilty to the charge in a Justice of the Peace Court, and received the mandatory minimum sentence (including a night in jail), is a strong program supporter. The reasons for her avoidance of the PACT program were not known.

City Manager Attitudes. The attitude of the City Manager, as inferred by the programs and activities he has approved, was one of continuing support for the ASAP and the quasi-diversionary system. The City Manager was not interviewed. Much of the responsibility for actual supervision of court-prosecutor areas had been assumed by the Intergovernmental Programs Administrator. Policies expressed by the Administrator to the City Council, City Court, and City Attorney's office had been formulated, authorized, or endorsed by the City Manager or Assistant City Manager.

Intergovernmental Programs Administrator (IPA) Attitudes. The Intergovernmental Programs Administrator, the city official with the responsibility for supervising the Phoenix ASAP, did not become actively involved in the resolution of the court system processing problems until October 1973, at the time of the initial Judicial Seminar. On that occasion he was impressed with the Chief ASAP Prosecutor's idea for a diversionary program. He gave approval to the Chief ASAP Prosecutor and the ASAP staff to proceed with the development of a proposal for such a diversionary system for drinking drivers, a concept he had frowned on during the first year of the ASAP operation. He subsequently became an influential and enthusiastic advocate of the PACT program and of the assumption by the city of funding responsibility for the ASAP activities.

The Administrator observed that PACT had effectively relieved pressure on the court system by allowing an increased caseload in an orderly manner. He felt that the PACT program had been successful in achieving its objective of getting people into rehabilitative programs; however, the ultimate question of the impact of the program in reducing recidivism had not yet been answered (in March 1975). The Administrator noted that the PACT success had been facilitated by other changes--appointment of a dynamic Chief Presiding Judge to the City Court, the authorization to eliminate appeals de novo to Superior Court by creating an acceptable lower court record, and the establishment of a division system in City Court.

Budget and Research Department Attitudes. The attitudes of personnel in policy-making positions in this city office were not determined. Previous requests from court and prosecutor agencies for additional resources were usually disapproved or reduced by this department after research and analysis by staff analysts. In fact, the Department felt it was questionable whether the PACT program would reduce the prosecutor work load significantly or reduce court congestion. A serious underestimation of the PACT staffing requirements significantly hampered the efficiency of PACT operations during the first year of operation.

Phoenix Alcohol Safety Action Project Attitudes. The ASAP staff was extremely pleased with the development of the PACT program. The previous deficiencies in the system which had been most important to the ASAP were eliminated by this new procedure. ASAP staff felt that the purpose of PACT was to process DWI offenders on a planned and earned plea bargain basis in order to get them into appropriate rehabilitation modalities. The function of the remainder of the system was to back-up the PACT approach by prosecuting those who refused the PACT, who were ineligible for the program, or who failed to complete the required alcohol education or treatment program. If a DWI offender was then prosecuted and convicted, it was the duty of the judges to refer these offenders back into the rehabilitative system. ASAP staff viewed the PACT program as a means to achieve a desirable end; an earned plea bargain system itself was not an end-all. The PACT program cleared the dockets and provided referrals to alcohol treatment.

The ASAP staff worked diligently in facilitating meaningful change in the Phoenix drinking-driver control system. The director and her staff actively promoted development of the PACT program through staff advice and assistance, the hosting of coordinative meetings and seminars, and encouragement and stimulation of system personnel. The ASAP Director, the Chief ASAP Prosecutor, and the Chief Presiding Judge worked closely in the design phase of the program and in promoting acceptance. The ASAP staff felt that the program was a demonstrated, effective device for expeditious and rational processing of DWI cases; that it was fair, providing an equal opportunity to all for an earned bargain; and that it would assist the ASAP in its evaluative research to determine the efficacy of the various sanctions employed, including education and treatment options. With City Council support and funding for the program, the ASAP anticipated that PACT operations would continue for at least the final two years of federal funding involvement through 1976.

Citizens Alcohol Safety Advisory Committee Attitudes.

The Citizens Alcohol Safety Advisory Committee was created because of the desire of the city government (including the ASAP itself) to review the effectiveness of the ASAP program with a view towards continuation funding from local sources if the federal government failed to continue the project. The project was reviewed in some detail by a subcommittee structure of the Advisory Committee. The Committee recommended that the systems approach to controlling the DWI problem be continued and that city government should assume funding for the ASAP if the federal government did not.

The chairman of the Advisory Committee reported that the use of citizens' committees to examine public issues arising before governmental units in Arizona is a fairly common practice. The Advisory Committee is composed of professional, business, and governmental leaders of the community. The Advisory Committee appeared to be an active, functional group, acting as a review or investigative body for the project. Most aspects of the ASAP program were reviewed by subcommittees of the advisory committee, with the review process planned to continue in the future. The Advisory Committee files its reports directly with the City Council.

The Advisory Committee was actively involved in the review of both past and proposed ASAP-related programs, including PACT. PACT was "wholeheartedly" endorsed by the Committee in May 1974, an important event in the history of the PACT program. Subsequent reviews included an annual assessment in September 1975, at which time the Committee found the PACT program had "operated remarkably well in its first year considering the novelty and rather far-reaching effects of the program." 26 Support of the PACT concept by the Committee has been consistently favorable.

The Chairman observed that the PACT program was the outgrowth of compromises and adjustments necessary for the survival and acceptance of the program in Phoenix. The PACT program may not serve as a model for other jurisdictions unless their problems and situation are the same. Concern existed about the role of the PACT case counselors: were they practicing law as agents of the prosecutor in presenting the plea bargain or were they officers of the court, similar to probation officers, acting for the City Court? The Committee felt that the PACT system more faithfully executes the intent of the law than the previous process, in which the outcome was based on attorney tactical and plea-bargaining skills. PACT is fair and nondiscriminatory.

26. Letter of September 9, 1975, from Marriner P. Cardon to Hon. Timothy A. Barrow.

6.2 DWI Offender Attitudes

During the development of the PACT program, concern had been expressed about the fairness and timeliness of the previous processing procedures which involved plea bargaining favorable to defendants with counsel and wasted time for all, including defendants, through in-court delay and multiple court appearances. A DWI offender attitude survey was not conducted; however, some reasonable impressions were made through anecdotal reports of several DWI offenders and judges who have been informed by offenders of their experiences in the PACT program.

As expected, a program which allowed a reasonable alternative to the possibility of a jail sentence was appealing to DWI offenders eligible for PACT. The acceptance rate of PACT offers through the end of 1975 was 96.6%, an indication of a favorable attitude toward the PACT concept. There were no subsequent quantitative data on how many would have accepted PACT if they had known what the experience was actually like, or on how many found the procedure to be fair, timely, and helpful. The judges conducting PACT disposition sessions, during which the plea bargain is completed for DWI offenders who have successfully followed the PACT requirements, have commented that there was an obvious change in attitude by many of the offenders. Not only were the offenders favorably disposed toward the PACT program, they also felt that the program had been beneficial and worthwhile. The positive attitude of the City Court judges, as they said, was based to a considerable degree on the feedback they received from offenders completing the program.

The few conversations with DWI offenders entering PACT indicated that the PACT program was well received. The offer seemed reasonable, especially since none really contested the fact of their guilt, and the benefits of certainty of no jail sentence or loss of license, savings in costs for an attorney, and no increase in insurance rates were appreciated.

6.3 Public Attitudes

It was extremely difficult to determine the attitude of the general public toward PACT. There was some adverse reaction reported in the local press, for example, when a state legislator voiced concern about the program circumventing the law. By and large, though, media reports were favorable. Negative comments were much more newsworthy than the description of a routine court processing system; consequently adverse reactions were more likely to receive coverage by the media.

Perhaps a more accurate barometer, in the absence of a public attitude survey, was the attitude of the Citizens Alcohol Safety Advisory Committee, which was comprised of a cross-section of at least the more successful citizens in the community. The Committee's assessment was based on all available information regarding the operation of PACT. Its reaction was consistently approving and complimentary. The purpose of establishing such a committee was to determine public attitudes and to provide an opportunity for public inputs into the governmental decision-making process. The result was the recognition by a citizens' body of the problems confronting the Phoenix drinking-driver control system and a decision by that body that the solution devised was a reasonable response.

7.0 SUMMARY OF THE PACT CHANGE PROCESS

The adoption of major system change in the Phoenix drinking-driver control system, i.e., the PACT quasi-discretionary process, was achieved within a span of about one year. Since it is a program based on the discretionary powers of the prosecutor to control the charging process, including negotiation with defendants over charging concessions to be made in return for a plea of guilty, it appears interesting that such a prosecution-oriented program could be implemented without the support of the chief prosecuting official. Indeed, this is what transpired in the adoption of the PACT program in Phoenix. It is the purpose of this analysis to determine and discuss how this system change occurred, including the functional steps in the evolution of the change, the major and key factors involved, the barriers to the change, and the strategies employed to avoid or eliminate the barriers.

7.1 The Terminology of Change

In this analysis certain terms and concepts will be employed with specific meaning in the context of this report. To ensure common understanding of these terms, a brief definitional summary will be presented.

The actors or key individuals involved in the change process are classified according to their role in the adoption (or rejection) of a particular change or innovation. The roles are not intended to be exclusive; an actor may perform all of the roles at one time or another. An innovator is a person who conceives, adapts, or introduces a change to an organization or system. An advocate is one who promotes the acceptance of change; his counterpart is a defender, a person who promotes the rejection of change. A leader is an individual or group which, through influence or power, can require the acceptance or rejection of change.

In describing the change-adoption process, several other terms will be used. A barrier is an obstacle or impediment of any type which delays or prevents the achievement of change. An incentive is an inducement of any type which encourages or enhances the achievement of change. A change strategy is a technique, plan or device for achieving change, particularly by eliminating or circumventing barriers to change.

7.2 The Process of Change

The historical development of the Phoenix drinking-driver program was presented in Section 4.0. Reference will be made to the details of the history provided there.

Five functional steps have been identified in the change which resulted in the adoption of the PACT program in Phoenix:

- identification and diagnosis of the problem;
- design of a solution (the change);
- authorization for implementation (preliminary acceptance);
- conduct of trial and evaluation; and
- modification and stabilization.

Identification and Diagnosis of the Problem. The problem confronting the control system depended upon the perspective from which the problem was being defined. To all actors and personnel in the system the problem was, at a minimum, the processing inefficiency of the judicial process; to the ASAP staff, most judges, probation personnel, treatment/rehabilitation personnel, and to many other personnel (except for the City Attorney, his City Prosecutor, and most of the prosecution staff), the problem was the processing and referral dysfunction of the judicial process. Not only was the system not functioning as a timely and efficient processing mechanism, it was also not responding to the need perceived by many system personnel, including the ASAP staff, for referral of DWI offenders to innovative education-and-treatment programs designed to diminish further abusive drinking-driving behavior. There was an attitudinal stalemate: the ASAP wanted regular referrals to alcohol education and treatment; the prosecutor wanted to continue traditional plea-bargaining practice and not include any requirement for such referrals. The identification of the problem was not difficult; statistics clearly showed that a sizeable court case backlog was developing in both City and Superior Court, and large numbers of offenders were not being referred to any program after conviction. Procedural alterations in the system to alleviate the problem proved not to be fully effective. Pretrial disposition conferences (PDC) expedited the traditional plea-bargaining activities, while the backlog remained at an unacceptable level. Requests for additional resources were declined, with perceived under-utilization of existing resources being cited as the major reason. It was at this point that the impetus for major change was provided.

Design of a Solution. As described previously, early in the course of the ASAP, the Chief ASAP Prosecutor suggested the possibility of using a diversion approach with drinking drivers. Diversion had been successfully employed with juveniles, drug abusers, mental defectives, and alcoholics, and application to drinking drivers appeared practicable.

This concept was rejected at the time. In October 1973, at an ASAP-sponsored seminar for judges and other system personnel, the concept was again offered by the Chief ASAP Prosecutor as a solution to the current problem. The Intergovernmental Programs Administrator, aware of a need for change, authorized the Chief ASAP Prosecutor and the ASAP staff to proceed to develop an innovative proposal for a diversionary program for drinking drivers. A potential barrier to development of this proposal, the City Attorney, was ignored. The Chief ASAP Prosecutor, an employee of the City Attorney, operated under unrestrictive administrative control and was able to work on the proposal without the express approval of his immediate superiors. The assignment of the task to the ASAP Prosecutor was made by higher authority in city government (the Intergovernmental Programs Administrator), responding to the desire of the City Council for development of an optional plan.

In January 1974, the new Chief Presiding Judge of the City Court assumed office. After becoming acquainted with the ASAP program and the concept for a diversionary program, he became actively involved in the developmental process and apparently took control of PACT development. Meetings were held with key system actors, primarily enforcement administrators and judges, to solicit input on the design of a new system. It was concluded that the diversionary program would operate within the traditional system. There would be processing through the court; dismissal of all charges, the usual procedure in a diversionary program, would not be utilized. The concept of an "earned" plea bargain as a mechanism to encourage participation in an education or treatment program was accepted. A system involving the use of a "sweet offer," coupled with referral to an alcohol program, and provision for permanent entry on the driving record, appealed to most of the key actors involved. The ASAP staff, the Chief ASAP Prosecutor, the Chief Presiding Judge, and the Intergovernmental Programs Administrator all functioned as advocates of adoption of the new system, called "Prosecution Alternative to Court Trial" (PACT).

Authorization for Implementation. Strategies for securing implementation of this new system were devised. Since it appeared unlikely that the City Attorney or his staff would alter the practice of plea bargaining without referral, it was necessary to develop an adoption strategy which would negate any resistance presented by the chief prosecuting official. The advocates determined that endorsement and authorization by the policy-making leader of the city, the City Council, would be necessary. At the urging of the ASAP, a citizens' committee was appointed by the City Council to review the ASAP program and to provide

recommendations on activities which should be continued with local funding. The proposed PACT program had advocates influential with the Council: the Intergovernmental Programs Administrator, who was the City Manager's liaison to the Council; the Chief Presiding Judge, who was effective in presentations to that body; and an attorney councilman, responsible for overseeing the court area for the Council.

The City Council endorsed the PACT concept in April 1974. In May, the citizens' committee endorsed PACT. In June, the Council approved funding for PACT for a six-month trial period. It appears a bandwagon effect of sorts occurred, carrying PACT to initial acceptance for implementation. There were ineffectual critics and defenders; the City Attorney and staff, the probable major defenders, did not offer active opposition. Resentment, however, was created because of the limited involvement afforded the City Prosecutor's regular staff in the planning of PACT.

Conduct of Trial and Evaluation. The City Council authorized a test of the proposed system. The next step in the adoption process involved the planning, preparation, implementation, and operation of the PACT program for the trial period. The ASAP coordinated the gearing-up activities during this phase, including the development of procedures and the hiring and training of personnel.

In July, a Prosecutor Seminar was sponsored by the ASAP to introduce the PACT program to the City Prosecutor's staff. The Chief Presiding Judge and the Chief ASAP Prosecutor were present as advocates to explain and sell PACT. Recognizing a probable decrease in their involvement in DWI case processing, the prosecutors tentatively accepted the program, despite one or two vocal defenders of the status quo.

On August 14, one day prior to the inauguration of PACT, final coordination and briefing of system personnel was conducted by the ASAP. On August 15, PACT commenced operations. The program generally operated as planned and, in spite of some staffing deficiencies and inefficient procedures and practices, the PACT was considered successful. The acceptance rate for PACT participation started and remained at the 95-97% level throughout 1974 and 1975.

In January 1975, after notice of continued federal funding had been received, the City Council renewed its authorization of the PACT program for another six months.

Modification and Stabilization. The final step of the adoption process was modification of system operating procedures and stabilization of the program by final integration of the system into the operations of the responsible agencies. During this period, a need was anticipated for an administrator to ensure the revision and refinement of procedures to achieve maximum efficiency. This role was assumed by the new City Prosecutor. The City Attorney, recognizing that PACT was ensured for at least the first six months of 1975, requested his City Prosecutor to assume responsibility for developing a more efficient paper flow process in cooperation with the ASAP and the City Court, and for documenting the system procedures to which the participating agencies should subscribe.

The institutionalization of the PACT process into city operational routine was achieved later in the year. A Rehabilitation-Probation Center was created as an arm of City Court to provide the PACT orientation, screening, and referral activities, the management of the short-term rehabilitation programs, and the city's expanding probation services. In September, the City Council responded positively to reports of PACT effectiveness from the ASAP management and the Citizens Alcohol Safety Advisory Committee by endorsing the program for further continuation as part of the City Court.

8.0 FINDINGS AND CONCLUSIONS

Based on the analysis of the history of the operation of the Phoenix drinking-driver control system from 1972 through 1975 and the reports and impressions of numerous observers and participants in the system, the study team determined that the following findings and conclusions are appropriate.

8.1 Findings

- The DWI enforcement activity achieved and sustained a high level of arrests during the period, significantly increasing the arrest rate compared to the pre-1972 experience.
- Despite an increase in available resources, the prosecutorial-judicial component of the system was not able to provide timely adjudication and disposition of DWI cases after the arrest rate increased.
- The reason for the failure to process cases in a timely fashion resulted from a high rate of requests for trial, particularly jury trials, and subsequent overscheduling.
- The underlying reasons for the system failure were generally agreed to be a combination of factors:
 - . high arrest rate;
 - . mandatory one-day jail term for conviction of DWI;
 - . increased involvement of defense attorneys as a result of Argersinger and the possibility of incarceration as an outcome in DWI cases;
 - . prosecutor and court processing inefficiencies; and
 - . availability of a trial de novo upon appeal to the Superior Court.
- The primary response of the system to the trial backlog problem, since additional resources were not authorized, was widespread plea bargaining.
- The plea-bargaining policy was effective in reducing the trial backlog, but did not result in either jail terms or referral to alcohol education or treatment programs.

- The policy of the managers of the city prosecution activity was that requiring participation in alcohol rehabilitation was not an appropriate function for prosecutors.
- By late 1972 and throughout 1973 and 1974, the legislative policy of mandatory incarceration and discretionary treatment for alcohol abusers was not being fulfilled because of the plea-bargaining policy.
- The PACT program was designed to remedy several perceived deficiencies in the system:
 - . unfairness of plea bargaining for offenders unrepresented by counsel;
 - . lack of referrals of drinking drivers to alcohol rehabilitative programs; and
 - . inefficiency and lack of uniformity and consistency in prosecutor and court procedures for handling DWI offenders.
- PACT is a comprehensive plea-bargaining program designed to provide an expedient, uniform, and fair method of classifying and diverting DWI offenders into a short-term alcohol rehabilitation program, with the inducement to participate provided by a plea bargain and thereby avoidance of the possibility of any incarceration.
- From August 1974, through 1975, the PACT program operated in a consistent and uniform manner, provided an entry into appropriate rehabilitative programs for all eligible offenders, and efficiently processed most cases to conclusion within a reasonable period of time.
- The commitment of key members of city management to the PACT program, despite the lack of interest or approval by managers of the prosecution agency, was sufficient to ensure the trial of the new approach.
- The PACT program was continued after periodic review and evaluation determined that it was meeting its objectives of fairness, referral effectiveness, and efficiency. The satisfactory performance of the program eventually resulted in its integration into the standard operating routine of city government and its support with local funds.

- The general attitude toward PACT has been one of ambivalence. Nearly everyone wanted the traditional system to work as designed, but there was unanimity that it had ceased to function fairly, efficiently, or effectively in implementing legislative policy. Concern was expressed that the PACT program constituted a circumvention of the law, but all recognized that the PACT program was necessary and that it was a fair and efficient case processing method.
- Throughout the four-year period, the Alcohol Safety Action Project was the only agency in the control system which ensured a cooperative, system-oriented approach to drinking-driver case disposition. The ASAP worked to identify problems and facilitate their solution through coordination, stimulation, and funding. It was the ASAP which fostered the development and support for the PACT approach.

8.2 Conclusions

- The PACT system did not fully effectuate the intent of the DWI law; mandatory sanctions were avoided, but treatment options were provided. The practical effect of the PACT system, which routinely results in conviction for charges substituted for DWI, is a de facto decriminalization of first-offense DWI.
- Legislative policy in the form of a mandatory jail term for a drinking-driving offense may not be implemented if a drinking-driver control system has inadequate enabling law, resources, or procedures, or if the key personnel in the system do not support the legislative policy. All of these factors were operative in the Phoenix system.
- A misdemeanor court (such as the Phoenix City Court) system must be capable of providing opportunity for trial for all DWI offenders who seriously desire to contest the charge or who want to test the ability of the system to provide the trial within the time limit required. Any continuing inability to provide this opportunity will result in an increase of those offenders who will want to test the system in the anticipation of a less severe outcome.

- The PACT Program is an effective mechanism for referral of DWI offenders to any type of program for changing undesirable drinking-driving behavior, as long as the offender perceives the alternative program to be less onerous than the other sanctions threatened.
- The PACT concept is transferable to any jurisdiction where a routinized, high-volume, but discriminating, referral mechanism is needed. The methodology can be applied to either a court-operated or prosecutor-operated program. The approach can be used to link offenders with whatever treatment or correctional programs are available. It may find greatest applicability in jurisdictions which cannot or will not apply the existing legal sanctions because of actual or perceived overpenalization by the legislature.
- The design and implementation of a PACT approach requires the involvement of all key agencies in the control system to ensure acceptance of the program and the development of an efficient processing procedure. A system-coordinating agent similar to an ASAP can facilitate this process.