

4530

X
ANALYTIC STUDY 4:
Judicial Disposition of Alcohol-Related Traffic Arrests

Floyd Romslo
Karen Ives
Forst Lowery

Hennepin County Alcohol Safety Action Project
University of Minnesota
625 Second Avenue S.
Minneapolis, Minnesota 55402

Contract No. DOT HS-048-1-064
Contract Amt. \$3,693,000



PRINTED MAY 1979
FINAL REPORT

Document is available to the U.S. public through
The National Technical Information Service,
Springfield, Virginia 22161

Prepared For

U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Washington, D.C. 20590

NOJ# 74530

This document is disseminated under the sponsorship of the Department of Transportation in the interest of information exchange. The United States Government assumes no liability for its contents or use thereof.

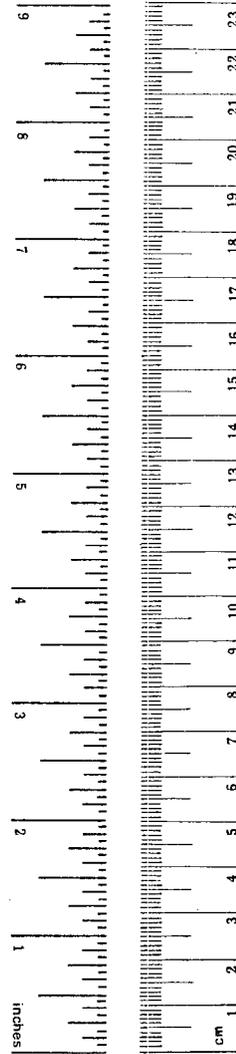
1. Report No. DOT HS-804 467		2. Government Accession No.		3. Recipient's Catalog No.	
4. Title and Subtitle Analytic Study 4: Judicial Disposition of Alcohol-Related Traffic Arrests				5. Report Date May 1977	
				6. Performing Organization Code	
7. Author(s) Floyd Romslo, Karen Ives, and Forst Lowery				8. Performing Organization Report No.	
9. Performing Organization Name and Address Joint report of Hennepin County Alcohol Safety Action Project and University of Minnesota: 625 Second Avenue S. Minneapolis, Minn 55402				10. Work Unit No. (TRIS)	
				11. Contract or Grant No. DOT-HS-048-1-064	
12. Sponsoring Agency Name and Address U.S. Department of Transportation National Highway Traffic Safety Administration Office of Driver and Pedestrian Programs Washington, D.C. 20598				13. Type of Report and Period Covered FINAL STUDY 1971 - 1976	
				14. Sponsoring Agency Code	
15. Supplementary Notes					
16. Abstract This study summarizes the disposition of DWI arrests in Hennepin County, Minnesota, from 1971 through 1976. Trends in proportions of differing disposition are noted and related to factors such as blood alcohol concentration. Court "backlog" or time between arrest and case disposition is tabulated, as is the utilization of pre-sentence investigations. Fines assessed and workhouse sentences are also presented.					
<p>NCJRS</p> <p>JAN 8 1981</p> <p>ACQUISITION</p>					
17. Key Words Alcohol Related Traffic Offenses Court Disposition of DWI			18. Distribution Statement Document is available to the U.S. Public through the National Technical Information Service, Springfield, Virginia, 22161		
19. Security Classif. (of this report) UNCLASSIFIED		20. Security Classif. (of this page) UNCLASSIFIED		21. No. of Pages 36	22. Price

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

*1 in = 2.54 (exactly). For other exact conversions and more detailed tables, see NBS Misc. Publ. 286, Units of Weights and Measures, Price \$2.25, SD Catalog No. C13.10:286.



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

CONTENTS

<u>Section</u>		<u>Page</u>
A	The Municipal Court and Minnesota DWI Law	1
B	Court Disposition Data, 1971 - 1976	17
C	Dispositions Related to Court Division and to Blood Alcohol Concentration	23
D	Demographic Characteristics of the Defendants	27
E	Timeliness of the Adjudication Process	29

Table

B-1	Dispositions of DWI Arrests, 1971-1976	18
B-2	Sanctions Imposed, 1976, 1975, 1973	20
B-3	Distributions of Fines, When Assessed	20
B-4	Average Fines Assessed	21
B-5	Pre-Sentence Investigations Conducted	21
C-1	Percentages of Case Outcomes by Division	24
C-2	BAC Distribution by Court Division	24
C-3	Distribution of BACs by Case Disposition	26
D-1	Age Distribution for DWI Arrests, by Year	27
E-1	Court Backlog	30
E-2	Time Lag for 1976 Case Dispositions	31
E-3	Percent of Cases Disposed of Within 3 Months	31
E-4	Percent of All Cases Disposed of Within <u>X</u> Months, by Division	32
E-5	Time Lag for Jury Trials During 1976 and 1975	32

Figure

B-1	Court Disposition of DWI Charges, 1971 - 1976	19
-----	---	----

Section A

This section is divided into five major subsections:

DWI Law Milestones
Minnesota Laws pertaining to Alcohol-Related Traffic Offenses
Hennepin County Municipal Court
Court Processing of DWI Offenses
Judicial Manpower

DWI Law Milestones

Milestones in the development of Minnesota DWI law are:

- *Prior to 1955 - "Under the influence" was the only determining criterion

- *1955 -BAC of .15 or above as prima facie evidence was added to the law

- *1967 -BAC reduced to .10 or above as prima facie evidence

- *1971 -BAC of .10 or above made illegal per se
 -Implied consent law became operational through modifications to earlier law
 -Preliminary screening test law passed

- *1976 -Mandatory pre-sentence investigation law passed
 -Mandatory driver license revocation (with right to hearing) where police report BAC of .10 or above

Numerous other details relating to the evolution of drinking-driving laws in Minnesota have not been included in this brief summary. The following subsection of this study presents details of current law.

Minnesota Laws Pertaining to Alcohol-Related Traffic Offenses

The 1976 Minnesota legislature enacted a series of new laws concerning alcohol-related traffic offenses in order to make the arresting process and the judicial handling of these cases more effective in combatting the problem of drunken drivers. The basic provisions of the DWI law were not in themselves substantially changed, but were reinforced by additional laws.

A. The Basic DWI Law

Minnesota Stat. 169.121, subd. 1, reads:

It shall be a misdemeanor for any person described in (a), (b), (c), or (d) to drive, operate or be in actual physical control of any vehicle within this state:

- (a) A person who is under the influence of an alcoholic beverage or narcotic drug;
- (b) A person who is an habitual user of narcotic drugs or who is under the influence of a controlled substance which impairs the ability to drive;
- (c) A person who is under the influence of a combination of any two or more of the elements names in clauses (a) and (b) hereof;
- (d) A person whose blood contains 0.10 percent or more by weight of alcohol.

B. Preliminary Screening Test

Minnesota Stat. 169.121 subd. 1 states that if a police officer "... has reason to believe ..." that a driver may be violating 169.121, then the police officer "... may require the driver to provide a sample of his breath for an immediate preliminary screening test or analysis before an arrest is made ..."

The results of this test are not used for evidentiary purposes in any court action, but are used solely for the purpose of assisting the officer in making the determination of whether or not to arrest the driver.

If the driver refuses to furnish a sample of his breath for the test, the implied consent provisions of Minn. Stat. 169.123 apply. The driver, however, will not have his license revoked under 169.123 if he chooses to submit to an evidentiary test.

C. Evidentiary Test

Upon making an arrest under 169.121, the police officer may require the driver to submit to a test "when the officer has reasonable and probable grounds to believe that a person was under the influence of an alcoholic beverage. . ."

The administration of the test is governed by Minn. Stat. 169.123. The statute states that: "Any person who drives or operates a motor vehicle upon the public highways of this state shall be deemed to have given consent. . .to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood." The test is administered at the direction of the police officer. The arrested person may decline to take a blood test and choose to take a breath or a urine test, whichever is available. If no alternative to the blood test is available, the arrested person shall have no action taken against him for declining to take a blood test.

If the arrested person elects to take the direct blood test, then, under Minn. Stat. 169.123 subd. 3 "only a physician, medical technician, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein." Further, the arrested person has the right to a physician (or appropriate other) of his own choosing to administer an additional test provided that the test is obtained at the place of custody and at no expense to the state.

D. Chemical Test Evidence

Under Minn. Stat. 169.121 subd. 2 the results of a chemical analysis upon the arrested person's blood, breath, or urine may be admissible as evidence in any prosecution arising out of Minn. Stat. 169.121 misdemeanor.

The statute further provides that:

- (a) Evidence that there was at the time 0.05 percent or less by weight of alcohol in the person's blood is prima facie evidence that such a person was not under the influence of an alcoholic beverage.
- (b) Evidence that there was at the time more than 0.05 percent and less than 0.10 percent by weight of alcohol in the person's blood is relevant evidence but it is not to be given prima facie effect in indicating whether or not the person was under the influence of an alcoholic beverage.

Under Minn. Stat. 169.121 subd. 1 (d), a driver whose blood contains 0.10 percent or more by weight of alcohol has a blood-alcohol concentration that is illegal per se.

E. Sanctions

Minn. Stat. 169.121 subd. 3 provides that every person convicted under this statute "shall be punishable by imprisonment of not less than ten days or no more than 90 days, or by a fine of not less than \$10 nor more than \$300, or both, and his driver's license shall be revoked for not less than 30 days. . ." However, a person whose violation was the proximate cause of serious injury or death to another person "shall be punished by imprisonment for not less than 60 days nor more than 90 days, or by fine of not more than \$300, or both, and his driver's license shall be revoked for not less than 90 days."

Under subd. 6, the court may stay imposition or execution of any sentence on the condition that the person convicted submits to a public or private treatment institution or facility certified by the department of welfare for the purpose of providing rehabilitation for chemical dependency.

F. Right to Counsel

The Minnesota Supreme Court in *Prideaux v. State of Minnesota*, October 8, 1976, held that the arrested person before making the determination of whether or not to submit to any chemical testing of his blood-alcohol content, has the right first to consult with a lawyer of his own choosing. The consultation with the attorney may not, however, unreasonably delay the administration of the test.

The police officer must inform the arrested person of this right, and aid the person in vindicating it. The *Prideaux* decision indicated that a telephone call prior to testing will vindicate this right. In a recent case, *Minnesota Dept. of Public Safety v. Kneisl*, March 4, 1977, the Minnesota Supreme Court said that if the attorney arrives at the jail within time to permit a valid administration of the test, then the attorney and the arrested person have a right to a private conference before the administration of any chemical test.

G. Effect of Refusal to Permit Chemical Testing

If the arrested person refuses to permit chemical testing, the police officer may certify to the Commissioner of Public Safety that he had reasonable and probable grounds to believe

that the arrested person had been driving or operating a motor vehicle while under the influence of an alcoholic beverage and that the person had refused to permit the test.

Under Minn. Stat. 169.123 subd. 4, the Commissioner of Public Safety upon the receipt of such a certificate "shall revoke his license or permit to drive and any non-residential operating privilege for a period of six months. If the person is a resident without a license or permit, the Commissioner of Public Safety shall deny the issuance of a license or permit for a period of six months after the date of the alleged violation. . ."

Before revocation under the law is effective, the Commissioner must notify the person by certified or registered mail of his intention to revoke. The arrested person has a 20 day period after the receipt of notice of revocation to request in writing, to the Commissioner of Public Safety, a hearing. Upon the request for a hearing, no revocation occurs until a final adverse judicial determination. If no hearing is requested, the Commissioner may issue an order of revocation after the 20 day notice period has lapsed.

The hearing requested pursuant to Minn. Stat. 169.123, subd. 6 will be heard before a municipal or county judge in the county where the alleged offense occurred, unless agreed upon to be heard in some other county. The hearing proceeds as in a criminal manner, but no right to trial by jury exists for this hearing.

The scope of the hearing includes:

1. whether the peace officer had reasonable and probable grounds to believe the person was driving or operating a motor vehicle while under the influence of an alcoholic beverage;
2. whether the person was lawfully placed under arrest (where applicable);
3. whether he refused to permit the test, and if he refused whether he had reasonable grounds for refusing to permit the test;
4. and whether at the time of request for the test, the peace officer informed the person that his right to drive might be revoked or denied if he refused to permit the test and of his right to have additional tests made by a person of his own choosing.

The municipal (or hearing) court must either order that the revocation or denial of license be rescinded or sustained and refer such order to the Commissioner of Public Safety. If the revocation or denial of license is sustained, the person within 20 days upon notification of his denial or revocation, may file a petition for a hearing on the matter in district court. The matter is heard de novo in district court with a right to trial by jury.

H. Open Bottle Law

Minn. Stat. 169.122 states that it is a misdemeanor to drink or consume intoxicating liquors or non-intoxicating malt liquors in any vehicle upon a public roadway, or to allow containers of these beverages which have been unsealed or the contents partially removed to be in driver or passenger area of any vehicle upon a public roadway.

1976 Additions to Supplement DWI Law

A. Pre-Sentence Investigation

When a person arrested under Minn. Stat. 169.121 is convicted of an offense under that statute, or is arrested for committing an offense under that statute and is not convicted under 169.121 but is convicted of another offense arising out of the circumstances surrounding the 169.121 arrest, then a pre-sentence investigation is conducted upon such person.

The pre-sentence investigation, under Minn. Stat. 169.126, is conducted by one knowledgeable in the diagnosis of chemical dependency. Minn. Stat. 169.126 subd. 2 requires the report to contain the following information upon the evaluation of a convicted defendant:

1. his prior traffic record;
2. characteristics and history of alcohol problems;
3. and his amenability for rehabilitation through an alcohol safety program.

The report must also include a recommendation as to the treatment of the defendant. Before sentencing, the court under 169.126 subd. 4 "shall give due consideration to the agency's report."

The pre-sentence investigation need not be conducted for persons convicted of a second offense (as described above) if the court has sufficient information already at hand on the person's need for treatment. Non-residents are not required under 169.126 subd. 6 to have pre-sentence investigations conducted upon them.

B. Reporting of Chemical Tests

When a chemical test under Minn. Stat. 169.123 has been administered and the test result indicates a blood-alcohol content level of 0.10 percent or more by weight of alcohol, the police officer administering the test must report the test result to the Commissioner of Public Safety.

The Commissioner of Public Safety pursuant to Minn. Stat. 169.127 subd. 2 "shall revoke for a period of 90 days the driver's license, permit, or nonresident operating privileges of any person whose blood contains 0.10 percent or more by weight of alcohol upon the receipt of a record of the blood, breath, or urine test administered by or at the direction of a peace officer pursuant to section 169.123."

Before revocation is effective, the Commissioner must notify the person by certified or registered mail of the intention to revoke. The notified person has a 20 day period to request a hearing. Upon a request for a hearing, no revocation is filed until a final judicial determination.

The hearing requested will be before a municipal or county judge in the county where the alleged offense occurred, unless otherwise agreed to be heard in some other county. The hearing must be held before 30 days from the receipt of request for the hearing unless the court grants a continuance. The hearing will not include a trial by jury.

The scope of the hearing includes:

1. whether the peace officer had reasonable and probable grounds to believe the person was driving or operating a motor vehicle while under the influence of an alcoholic beverage;
2. whether the person was lawfully placed under arrest (where applicable);
3. whether the person took the test;
4. whether he was advised of his right to have additional tests made by a person of his own choosing;
5. and the validity and reliability of the testing method used and the accuracy of the evaluation of the tests results.

The municipal or county court shall order that the revocation be sustained or rescinded and refer such order to the Commissioner of Public Safety for further action.

The Commissioner, upon an adverse judicial determination, may revoke the license of the person. The person whose license is revoked may, within 30 days, file a petition to have the matter heard in district court under the provisions of Minn. Stat. 171.19. The matter should be set for a hearing within 15 days upon notice to the Commissioner. The hearing is conducted by the court with no right to trial by jury.

Minn. Stat. 169.127 subd. 5 provides that when a license has been revoked under this law, the Commissioner may issue a limited license to the driver. In determining whether to issue a limited license, the Commissioner is allowed to consider the number and seriousness of the person's previous convictions along with his entire driving record. The Commissioner on the limited license may ". . . impose the conditions and limitations which in his judgment are necessary to the interests of the public safety and welfare including re-examination of the driver's qualifications, attendance at the driver improvement clinic, or attendance at counseling sessions. The license may be limited to the operation of particular vehicles and to particular classes and times of operation."

The person whose license has been revoked under this statute may have his license reinstated by the Commissioner after 60 days of the person's attendance at a driver improvement clinic, or counseling sessions, or other participation in treatment for an alcohol problem. However, the commissioner will not be allowed to reinstate a license under this statute to a driver whose license was revoked under 169.121 or 169.123.

C. Aggravated Violations - Gross Misdemeanor

Minn. Stat. 171.245 makes the operation of a motor vehicle in violation of 169.121 while the driver's license is cancelled, under suspension, or revoked for one of the following reasons, a gross misdemeanor.

1. because of the operation of a motor vehicle while the person was under the influence of alcohol or a narcotic drug, or while the person's blood had an alcohol content above a prescribed level;
2. because the person operated a motor vehicle which contained an open bottle of an intoxicating liquor or non-intoxicating malt liquor which had been opened; or
3. because the person refused to take a test which determines the alcoholic content in his blood when requested to do so by a proper authority.

Hennepin County Municipal Court

Persons arrested and charged in Hennepin County with driving while under the influence of an alcoholic beverage or driving by a person whose blood contains 0.10 percent or more of alcohol (both offenses are commonly and interchangeably called "DWI" in Minnesota) are tried by the Hennepin County Municipal Court, a unified county court having jurisdiction over misdemeanor and lesser offenses.

The Hennepin County Municipal Court is made up of 17 judges who rotate assignment among five divisions located in Minneapolis, Crystal, Wayzata, Bloomington and St. Louis Park. These judges also rotate assignments to different types of court duties, e.g., "conciliation", "criminal", "traffic", "pre-trial hearings", "motions", etc. Assistants called judicial officers represented the court in many pre-trial hearings where plea agreements were negotiated and sentence recommendations were developed subject to the approval of a judge.

Each of the court divisions handles cases arising from arrests made in the geographical area it serves. Prosecution is furnished by the community in which the arrest is made. Some communities employ full-time prosecutors; in others the city or village attorney prosecutes cases as well as performing other municipal legal duties; in still others part-time prosecutors are retained or perform under contract.

Court Processing of DWI Offenses

A description of the court process for a typical DWI case follows:

On the morning following arrest the defendant is arraigned unless the arrest took place on Saturday, in which case the arraignment takes place on Monday morning. At the time of arraignment the defendant enters a plea or asks for a continuance in order to obtain legal counsel. Judges are sensitive to the importance of protections for the defendant and do not accept a plea without making sure that the defendant is aware of right to counsel. A public defender is available to represent those defendants who meet indigency criteria.

At initial arraignment or re-arraignment after a continuance, if the defendant pleads guilty he is generally referred to a probation officer for a pre-sentence investigation.

Another alternative at the time of arraignment, although it is not typical, is for the prosecution to ask for dismissal or for amendment of the charge to another traffic violation. This may happen if the prosecutor has found a serious flaw in the charge or the arrest.

If a plea of not guilty is entered, the defendant requests a trial and the case is continued for a pre-trial hearing.

Disposition of a large segment of DWI cases takes place at the pre-trial hearing. It is at this point that plea-bargaining, or plea-negotiation, between the prosecution and the defense takes place. Plea-bargaining may have both benefits and drawbacks for all parties, including the community at large and society as a whole.

In Hennepin County Municipal Court pre-trial hearings involving a charge of DWI, the benefits and drawbacks may be arrayed as follows:

Benefits

- * Defendant may, by pleading guilty to a lesser charge, receive a lighter penalty when he could have been found guilty of a more serious charge and could have received a heavier penalty.
- * Both defendant and prosecution (community) are spared the additional expense of a court trial.
- * Court backlog is reduced or is not increased.
- * Problem drinkers are identified through a PSI conducted after plea to lesser charge and then begin rehabilitation earlier than if the PSI were delayed until after trial for DWI.

Drawbacks

- * Guilty plea to a lesser charge may mask the true offense and make identification of a second DWI offense committed in another jurisdiction more difficult.
- * Differing prosecution policies by arresting communities fosters uneven dispositions within the same court system. (It should be noted that this situation exists through the whole arrest/trial system; it is simply more apparent and more clear-cut in the pre-trial conference).

- * If being found guilty and paying a penalty for a violation of the law acts as a deterrent to other potential violators, then the deterrent value of a conviction may be lessened if "copping a plea" is perceived as "getting off easy" or "beating the rap". This may be especially true when cases involving well-known public figures are bargained to a reduced charge, even though similar cases are similarly bargained when the defendant is not well known.

The pre-trial conference serves principally to dispose of great numbers of cases which the court does not have the capacity to handle if they all go to trial. DWI cases make up the biggest single category of cases demanding a trial. This comes about for several reasons:

- * A jury trial is a constitutional right because the penalty may include incarceration. (In Minnesota the possibility of any incarceration is deemed to make a jury trial a constitutional right)
- * Loss of drivers license is mandatory upon conviction of DWI and this is viewed by defendants as worth determined efforts to avoid.
- * Sharply increased insurance premiums, continuing over a period of several years, results from a DWI conviction even after the license is restored.
- * Perhaps the most compelling reason for demanding a jury trial is the delay before the trial can be held, since this provides a length of time during which the drivers license remains valid and no additional insurance premium is being paid. This situation feeds on itself because as more defendants take advantage of this delay, the delays become longer and thus more attractive.
- * In a similar way, the fact that plea-bargaining does take place encourages not guilty pleas and demands for trial; in order to receive the opportunity of pleading guilty to a lesser offence, the defendant must first please not guilty to DWI. If all not guilty pleas did, in fact, ultimately result in trial, it may be that more guilty pleas would be entered at the outset, but there is not a great deal of evidence to support this proposition.
- * A jury trial offers the defendant who has a strong case against him the best odds for being found not guilty. Juries in Hennepin County have not delivered

verdicts of not guilty in any wholesale way (see following sections for distribution of dispositions), and we should remember that cases in which there are grounds for dispute over guilt or innocence are those most likely to go ultimately to trial. Yet, for whatever reasons, a skillful defense at trial makes a finding of not guilty a possibility; a plea of guilty at arraignment or at any subsequent time forecloses that possibility. An illegal per se law, such as Minnesota's, severely limits the area in which a defense can be mounted, but it does not mean that there is no defense.

At this point in a discussion of pre-trial conferences and plea-bargaining it would be appropriate to set down some of the proposals for either making plea-bargaining less necessary for dealing with the case load or making it more appropriate to dealing with DWI cases.

First, the suggestion has been made, not always entirely in jest, that fewer DWI arrests would reduce the load on the judicial system. This, of course, is the ultimate solution if the reduction in numbers of DWI arrests were the result of a reduced incidence of DWI. However, the findings of roadside surveys conducted by this project and by other projects demonstrates that even the comparatively high volume of arrests is netting only a small proportion of DWI drivers out of the traffic stream.

A second suggestion has been that if Minnesota law were changed to eliminate the possibility of jail sentence, at least for first offenders, then the constitutional necessity to offer a jury trial disappears, and with it the necessity for plea-bargaining. There is some question whether taking this route would leave the court with enough ability to coerce problem drinkers into rehabilitation programs. A jail sentence, stayed by the court on condition of participation in a rehabilitation program, provides the incentive now. (See pre-sentence investigation discussion later in this section).

As a practical matter, virtually no first offenders serve jail sentences, but there is a question as to whether removing a jail sentence as a possible penalty would be acceptable to the public or to legislators. This might be especially true if other traffic violations carried the possibility of jail sentences even though such a penalty is rarely invoked for first offenders of any kind.

A third suggestion would make a somewhat different change in Minnesota law, leaving the present DWI law essentially as

it stands but adding a new lesser included offense of "driving while impaired by alcohol" and establishing a lower illegal-per-se BAC level for that offense. Levels of 0.06 and 0.08 have been suggested as establishing this violation, which would, like the second suggestion above, not carry a possible jail sentence and thus would obviate jury trials. This lesser offense of "driving while impaired" would provide something to which some DWI cases could be bargained and at the same time retain the identification of the violation as an alcohol related one.

Outcome of the pre-trial conference may be any one of the following:

- * Agreement between defendant and prosecution to a plea of guilty to a lesser charge, most often "careless driving".
- * Prosecution refuses to reduce charge but defendant changes plea from not guilty to guilty of DWI.
- * Prosecution refuses to reduce charge and defendant refuses to change not guilty plea; the case is then set for trial.
- * In a small number of cases (e.g., where a serious flaw in the case becomes apparent) there may be a dismissal.

If there has been no resolution of the case at the pre-trial conference, a trial date is set.

The time intervals between arraignment, pre-trial conference and trial are often thought of as a single period of time, with some kind of average of such time referred to as the court's "lag-time" with the number of cases on the calendar for the trial referred to as the court's "backlog". Both of these terms can be very misleading. Certainly if the number of cases awaiting trial is growing, and if the average time between arraignment and trial is growing, then judicial disposition is falling behind the number of new charges being brought. It is not surprising if this happens when the capacity of the court system is unchanged while the number of arrests is sharply increased. What can be misleading, however, is the proportion of such cases roosting within the system compared with the total number being handled by the system. This subject is addressed in subsequent sections of this study.

It should not be assumed that after a trial date has been

set all cases then proceed to trial and are found guilty or not guilty only after such trial. Very frequently a defendant will change his plea from not guilty to guilty just before trial. This happens most often when there is a strong case against the defendant, he has used up all the delaying time possible, and rather than go to the additional expense of attorney's fees for trial, the plea is changed.

A pre-sentence investigation (PSI) is conducted after conviction but before sentencing. State law relating to mandatory PSI was presented earlier in this section under the heading "Minnesota Laws Pertaining to Alcohol-related Traffic Offenses." PSI activity in recent years is discussed near the end of Section B.

During the ASAP period prior to 1975, the PSI was conducted by one of three classifications of investigators. These are: (1) regular general duty probation officers who do not specialize in alcohol related cases although they have had some training in the field and must regularly deal with alcohol problems since high proportion of all court cases, traffic and non-traffic, involve alcohol; (2) ASAP probation officers on the staff of Court Services (Probation Department) but funded by ASAP, specially trained, and handling alcohol-related traffic cases exclusively; and (3) paraprofessionals on the ASAP staff, specially trained and handling alcohol-related traffic cases exclusively. The difference between the last two categories was not significant as to the work performed. The reason for having two different classifications was largely administrative. The paraprofessionals conducted the same kinds of PSIs and their reports and recommendations in this specialized field are equally well-received by the court. Minor technical details differentiating between the handling of their reports are not significant to this study. By making use of para-professionals, with the full approval of the court, ASAP was able to provide more service for the court and for more clients.

The separate ASAP PSI unit was absorbed into the regular Court Services Program at the end of 1974 in anticipation of the end of ASAP funding. With the extension of ASAP for 1975 and 1976, the Project agreed to fund the paraprofessional staff.

The PSI is conducted under severe time restrictions. PSIs are normally completed in less than one hour and a report

with recommendations is returned to the judge. Both Hennepin County ASAP and the Hennepin County Municipal Court are in agreement that this fast handling of cases is desirable for reasons other than simply speeding the court process. Treatment authorities to which clients are being referred also agree that the faster clients can be brought into treatment the better able the program can be to begin to get a handle on the problem. (To have a client arraigned the morning following arrest and between sheets at an alcoholism treatment center the same night is not the norm but it is not unusual).

After a finding of guilty, the judge sentences the violator. Up to a \$300 fine and/or up to 90 days imprisonment together with license revocation may be involved. More specific sentencing provisions of the law were covered earlier in this section. The violator offered a referral to a rehabilitation program as a condition of probation on a jail sentence may elect to decline that option. Some do, but this is rare. In the event that a client does not comply with the terms of his probation (e.g., does not register or appear as directed, or drops out) the court may revoke the probation.

Judicial Manpower During 1971 there were 16 full time judges serving the Hennepin County Municipal Court. There were 3,414 DWI arrests in the county that year. In 1976, 17 judges plus limited judicial officer assistance dealt with an incoming load of 6672 arrest cases.

A precise measurement of the proportion of total court time devoted to DWI charges is not possible but there is no question of the fact that DWI cases are the biggest single category of work by the court. Nearly one-third of the total court budget and personnel is assigned to the Traffic Court, not including the Traffic Violations Bureau. Other branches are Criminal, Civil, and Conciliation. There are from four to five times as many DWI cases demanding a trial (and thus receiving a pre-trial conference whether or not the case ultimately goes all the way to trial) as all other traffic cases combined.

Knowing that by increasing the level of DWI arrests, ASAP would create a significant increased court load, the project in 1972 sought to provide additional judge manpower by funding, as a separate countermeasure, the equivalent of one additional judge on the bench. The only feasible way of providing this was for the court to retain the part time services of part time judges from outside Hennepin County. This effort did provide additional help for the court but proved to be impossible to sustain. There is a limited pool of qualified and accredited unemployed or underemployed judges and it became exhausted in mid-1973.

In mid-1974 the court began a program by which judicial officers (lawyers) were appointed by the court to conduct some elements of judicial business which had been carried on by the judges. The principal item of such business was to conduct pre-trial conferences of DWI cases, with the outcome of the conferences presented to a judge for approval. ASAP participated by funding the equivalent of one full-time judicial officer; the equivalent of two other full-time judicial officers were funded from other sources. The judicial officer program was maintained through 1975. In 1976, the court utilized administrative employees as judicial officers.

"Legal Seminars" were planned with the objective of providing judges and prosecutors with special alcohol/traffic/legal information and opportunities for learning and exchange. The purpose of such seminars was served by statewide traffic conferences for judges and prosecutors which were held in Hennepin County and in which Hennepin County ASAP played a significant role. Therefore, funds budgeted for these seminars were re-programmed.

Section B

A comparison of Hennepin County Municipal Court dispositions of DWI cases from 1971 through 1976 shows that the total annual cases increased from 3,211 in 1971 to 8,392 in 1974 (161% above 1971) and 6598 in 1976 (105% above 1971).

Table B-1 shows the outcome of those cases by category of disposition, i.e., convicted of DWI, convicted of a reduced charge, acquitted or dismissed. Figure B-1 presents this information graphically.

The most significant shift in case outcomes has been the increase in the proportion of cases in which the accused has been found guilty of a reduced charge, from 18% in 1971 to 54% in 1974. A concomitant decrease is found in the proportion of convictions on the original charge of DWI from 75% in 1971 to 42% in 1974. In 1975 and 1976, the prior trend stabilized. 44% accepted pleas of guilty as charged and approximately 50% pled guilty to a lesser charge. The remaining 6% of the cases were primarily where all charges were dismissed.

Jury trials in 1976 constituted three-tenths of one percent (19 cases) of the case dispositions. Six (32%) of these defendants were found guilty.

Table B-2 summarizes the sanctions imposed by the court for convictions taking place during 1973, 1975, and 1976. During 1976, a fine was imposed in 43% of DWI convictions and 78% of reduced charge convictions. A workhouse sentence was served in 9% of the DWI convictions and 2% of reduced charge convictions. Comparable figures for 1973 were 14% and 3% respectively.

Table B-3 shows a distribution of the amounts of fines, when assessed at time of conviction.

Average fines for 1973, 1975 and 1976 are displayed in Table B-4. As can be seen from examining Tables B-2 and B-3, the declines in average fines are due both to a lower percentage of cases where any fine was currently assessed and to lower amounts assessed. Lower assessed fines were often accomplished through larger amounts stayed pending certain conditions such as not being re-arrested for DWI within one year. It also appeared customary to stay some fines subject to attendance at treatment programs such as AA.

Table B-1

Hennepin County Municipal Court
Dispositions of DWI Arrests
1971 - 1976

Period	Guilty Plea To DWI		Guilty Plea Lesser Charge		Trial Guilty DWI		Trial Acquitted		All Charges Dismissed		Total Dispositions	
	N	%	N	%	N	%	N	%	N	%	N	%
Year 1971	2409	75	571	18	28	1	41	1	162	5	3211	100
Year 1972	2780	71	814	21	42	1	37	1	270	7	3943	100
Year 1973	3464	59	2117	36	39	1	27	0	252	4	5899	100
Year 1974	3384	41	4519	54	88	1	37	0	364	4	8392	100
1975 Q 1	969	44	1143	53	7	0	8	0	73	3	2200	100
Q 2	833	44	974	52	6	0	4	0	60	3	1877	100
Q 3	590	41	805	56	4	0	5	0	42	3	1446	100
Q 4	700	45	786	50	5	0	3	0	61	4	1555	100
Year 1975	3092	44	3708	52	22	0	20	0	236	3	7078	100
1976 Q 1	779	43	927	51	1	0	4	0	105	6	1816	100
Q 2	824	46	854	48	2	0	4	0	112	6	1796	100
Q 3	731	50	640	44	0	0	0	0	86	6	1457	100
Q 4	655	43	774	51	3	0	5	0	92	6	1529	100
Year 1976	2989	45	3195	48	6	0	13	0	395	6	6598	100

Figure B-1

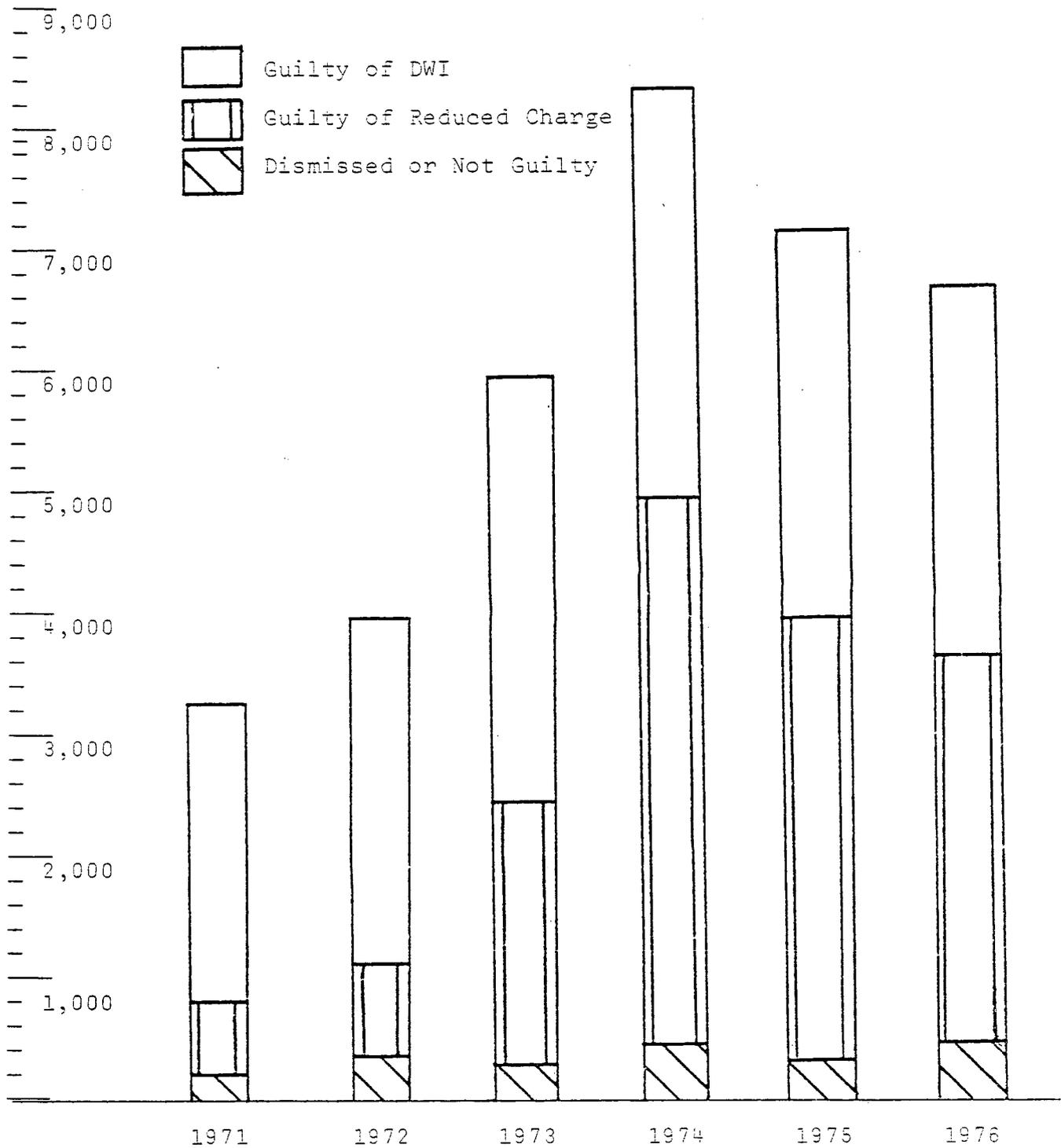
Hennepin County Court Dispositions, DWI Charges, 1971-1976

Table B-2 *

1976, 1975, and 1973 Dispositions
Sanctions Imposed

	<u>Convicted for:</u>					
	DWI			Reduced Charge		
	1976	1975	1973	1976	1975	1973
Fine	43%	48%	59%	78%	82%	87%
Workhouse	8%	9%	14%	1%	2%	3%
Both	1%	1%	-	-	-	-
Other (Stay, etc.)	<u>48%</u>	<u>42%</u>	<u>27%</u>	<u>21%</u>	<u>16%</u>	<u>10%</u>
TOTAL	100%	100%	100%	100%	100%	100%

Table B-3 *

Court Dispositions, 1976, 1975
Percentage Distributions of Fines when Assessed*

Dollars	<u>Dispositions</u>			
	Convicted - DWI		Reduced Charge	
	1976 %	1975 %	1976 %	1975 %
1-49	2	0	3	2
50-99	12	8	12	11
100-149	38	36	37	31
150-199	23	26	21	20
200-249	14	17	14	13
250-299	1	1	2	2
300	10	12	11	16

* Note: This data is tabulated from complete file.

Table B-4
Average Fines Assessed

<u>Average (Mean) Fine Assessed* When Convicted of:</u>		
<u>Year</u>	<u>DWI</u>	<u>Reduced Charge</u>
1973	123	174
1975	73	129
1976	62	113

* Includes dispositions where no fine is currently assessed.

Table B-5
Pre-sentence Investigations

<u>Year</u>	<u>Pre-sentence Investigations</u>	<u>Guilty Dispositions</u>	<u>Percent Conducted</u>
1972	1570 *	3636	43%
1973	3419 *	5620	61%
1974	5724 *	7991	72%
1975	3386 **	6822	50%
1976	3848 **	6190	62%

* Includes those PSIs conducted by ASAP funded personnel or referred to ASAP for follow-up. A few additional PSIs were conducted during the period.

** Includes all cases where documentation was available in the Court Services Adult Probation files.

Table B-5 summarizes the best available data regarding the conduct of pre-sentence investigations. The number of pre-sentence investigations actually conducted would be in excess of the quantity reported due to a decentralized system and the occasional failure of a probation officer to submit a case report. Guilty dispositions include guilty of DWI as charged or guilty to a reduced charge. In addition, an individual may have pleaded guilty to more than one offense, thus the number of pre-sentence investigations should be expected to be up to 10% less than the number of guilty dispositions even if all candidates received pre-sentence investigations.

The ASAP PSI unit was integrated into the regular County Court Services Adult Probation unit at the start of 1975.

In August of 1976, state law made pre-sentence investigations mandatory for Hennepin County Municipal Court guilty dispositions arising from DWI arrests (See section A) Documentation was not available to support the conclusion that the law had been fully implemented as of the close of 1976.

Section C

Table C-1 displays the disposition of cases by court division for 1975 and 1976. While major changes had been noted from 1973 to 1974, no substantial differences between 1975 and 1976 are noted. The slight differences between divisions appear to be associated with differences in BAC distributions of defendants as can be seen by comparing Tables C-1 and C-2.

In Division 1 most cases are those arising out of arrests within the City of Minneapolis and are prosecuted by the full-time staff of the Minneapolis City Attorney. In the other divisions prosecution is furnished by the community in which the arrest is made. Thus, Divisions 2 through 5 each handle cases coming from more than one community. Some communities employ full-time prosecutors; in others, the city or village attorney prosecutes cases as well as performing other municipal legal duties; in still others, part-time prosecutors are retained or perform under contract. Since the same judges rotate assignment to the various court divisions the difference in DWI case outcome -- principally the difference between the proportion of cases convicted of DWI vs. the proportion reduced to a lesser charge -- is ascribed by some observers as mainly a difference in prosecution policy. There are differences in prosecution policy and philosophy but there are other differences between Division 1 cases and those of other Divisions. These differences are pointed out by other observers, including some judges:

- * In Minneapolis all persons booked for DWI are video taped in the Minneapolis Police Department at the time Breathalyzer tests are offered (whether or not the tests are accepted). Other court divisions do not generally have available to them the video tapes of arrested persons. In divisions with many arresting departments, taping capability (as well as inclination to use tape and justification of it for relatively small numbers of arrests) is not available.
- * In Minneapolis trials are held in a building across the street from where the police department is located and expert testimony by Breathalyzer operators is quickly and conveniently available to the court. Since these Breathalyzer tests (as well as video tape) are concentrated in the hands of a few officers who conduct all the tests, it is possible to have this testimony without delay; as contrasted with the situation in the other divisions where a number of officers who give tests in different departments are often located miles away from the court location.

Table C-1

Percentage Case Outcomes by Division - 1975, 1976

<u>1975</u>	COURT DIVISION					<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	
Percent of Total Cases	38	19	15	11	17	100
By Outcome:						
Guilty-DWI	48	43	37	46	41	44
Guilty-Reduced	48	53	60	51	56	52
Acquitted, Dismissed	<u>4</u>	<u>4</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>4</u>
TOTAL	100	100	100	100	100	100
 <u>1976</u>						
Percent of Total Cases	42	18	16	10	14	100
By Outcome:						
Guilty-DWI	51	42	37	45	43	46
Guilty-Reduced	43	52	55	51	51	48
Acquitted, Dismissed	<u>6</u>	<u>6</u>	<u>8</u>	<u>4</u>	<u>6</u>	<u>6</u>
TOTAL	100	100	100	100	100	100

Table C-2

BAC Distribution by Court Division - 1976

<u>BAC</u>	COURT DIVISION					<u>All</u>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	
Less than .10	5%	3	3	5	2	4
.10-.14	19	20	27	16	25	20
.15-.19	29	30	32	34	35	32
.20 and higher	23	23	21	25	23	27
None	<u>19</u>	<u>19</u>	<u>17</u>	<u>20</u>	<u>10</u>	<u>17</u>
TOTAL	100%	100	100	100	100	100

This study does not conclude that there is any one reason for the differences in outcomes between court divisions. This difference has been declining in recent years.

A discussion of the pre-trial conference at which plea negotiation is conducted is found in Section A of this study. It seems clear that with increased arrests generating more load for the court system and with the number of judges available to handle the case load remaining constant, plea negotiation is one way to meet the problem. Hennepin County ASAP management agrees with those judges (and alcoholism treatment authorities) who find that the advantage of earlier identification and rehabilitation for problem drinkers through quicker adjudication outweighs the acknowledged disadvantages of large scale plea negotiation. The demonstration of the problem, through the ASAP, however, can give the community (and the state) information needed to meet the problem in a more appropriate way in future years.

Those concerned about earlier identification and rehabilitation through plea negotiation should also be interested in the percentage of those eligible who received a pre-sentence investigation. In 1976, available data indicates that 59% of those pleading or found guilty to DWI or reduced charges received a PSI. The actual percentage would be slightly higher since (1) some PSI reports cannot be found for coding and (2) PSI's from recent prior arrests of the same person may be current.

Table C-3 displays dispositions by BAC category for 1975. Because the BAC at time of arrest is an important element of plea negotiation, it is not surprising that only 7% of those pleading guilty to DWI had a BAC under .15 while 41% of those convicted of a reduced charge had a BAC of under .15.

Table C-3

Distribution of BACs by Case Disposition for 1976 Dispositions

	<u>Plea of Guilty to DWI</u>	<u>Guilty - Reduced Charge</u>	<u>Trial - Guilty</u>	<u>Trial Not Guilty</u>	<u>Dis- missed</u>	<u>Total</u>
Number of Dispositions	2,989	3,195	6	13	395	6,598
Percentage of All Dispositions	45	48	0	0	6	100
Percentage Distribution:						
BAC						
.00	0	1	0	8	2	1
.01-.04	0	0	0	0	2	0
.05-.09	0	5	0	0	4	3
.10-.14	7	35	0	8	16	20
.15-.19	29	35	0	15	26	32
.20-.24	33	8	50	0	22	20
.25+	12	2	17	8	10	7
Imp./con.	17	11	33	30	14	14
Unknown	<u>2</u>	<u>3</u>	<u>0</u>	<u>31</u>	<u>4</u>	<u>3</u>
TOTAL	100	100	100	100	100	100

Section D

Demographic characteristics of the DWI population are presented in this section. Since 95% of those arrested are convicted of DWI or a reduced charge, characteristics of the population arrested will be used except as noted.

Age

Table D-1 shows age distribution by year for DWI arrests. The major finding from examining this table is that the younger age groups are becoming relatively more involved in DWI arrests.

Table D-1

Age by Year for Hennepin County DWI Arrests

<u>Age</u>	<u>Year</u>			
	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>
Under 21	14%	13%	12%	8%
21 - 29	39%	37%	35%	35%
30 - 39	22%	22%	25%	25%
40 and above	<u>25%</u>	<u>27%</u>	<u>29%</u>	<u>32%</u>
Total	100%	100%	100%	100%

A cross tabulation of age by court disposition category was made in 1974. The younger age groups were found to have an over representation in reduced charge convictions. Further investigation indicated that this was due to the younger age groups tending to be arrested with lower BAC's as was shown in Table C-3 of this study. Defendants with low BACs are more likely to receive a reduced charge than those with high BACs.

Sex

Females comprised 10.5% of the total individuals arrested for DWI during 1976 in Hennepin County. This presents a slow but steady increase from 8.7% in 1973. Roadside surveys indicated that approximately 20% of the night time driver population in the county were female.

Driver License Record Checks

Findings from a study of the relationship between case disposition and driving record indicated that there was no substantial difference. The average number of prior convictions for all traffic offenses was 1.62 for DWI convictions and 1.67 for a reduced charge in a random sample of 257 DWI arrests during 1974. Other studies have also reached conclusions of no differences, thus further analyses have not been conducted in light of costs versus likelihood fruitful information.

Section E

This section describes the timeliness of the court adjudication process. Two confusing terms are often used to describe timeliness. One of these terms is "back-log" to describe the number of cases awaiting trial or awaiting some other court action. The other is "lag-time" or "court lag" to describe the time interval between arraignment and final outcome of a case.

Both of these terms are simple and seem to convey what they mean, but it is doubtful that there is a simple, clear-cut meaning for either of them to convey. Unfortunately, too, they also carry a pejorative implication: If there is "a big back-log" it must be somebody's fault, or the system's fault. This may very well be, but we should first describe what we are labeling "back-log".

Court backlog can be related to the arrest activity of the most recent periods. For example, in quarter 1 of 1971, the backlog at the end of March was 676 cases.

<u>Month</u>	<u>Arrests</u>	<u>Included in Backlog Count</u>
March	297	297
February	253	253
January	<u>218</u>	<u>126</u> (60% of arrests)
TOTAL	676	676

Thus the backlog at that time represented the arrest volume of the most recent 2.6 months.

If the court system were to keep abreast of the arrest volume, this measure would remain constant. It should not be expected to be zero under the current court operational methods, since arrests on New Years Eve or shortly before would not be scheduled for court until the following year.

Table E-1
Court Backlog

End of Year	Number of Months Arrests in Process*
1971	2.7
1972	4.2
1973	5.6
1974	5.0
1975	2.4*
1976	2.3*

* Prior to 1975 Bench Warrants issued were treated as cases not disposed of. By the end of 1974 this accounted for approximately 1 month of arrests. Bench Warrants were removed from the 1975 and 1976 quantities.

From examining Table E-1 it is obvious that the court now operates in a more timely schedule than it did before ASAP started. This is the result of two factors, a speed-up within the court assisted by judicial hearing officers and a decrease in DWI arrests during 1975 and 1976 as compared to 1973 and 1974.

Table E-2 displays the "lag-time" between arrest and court disposition.

Table E-2

Time Lag from Date of Arrest to Date of Case
Disposition for 1976 Case Dispositions

Number of Months From Arrest Date To Finding Date	<u>Found Guilty of DWI</u>		<u>Found Guilty of Reduced Charge</u>	
	Percent	Cumulative Percent	Percent	Cumulative Percent
0	28	28	12	12
1	28	56	23	35
2	17	73	28	63
3	10	83	14	77
4	5	88	6	83
5	4	92	4	87
6	2	94	1	88
7-12	3	97	4	92
13	3	100	8	100

Table E-3

Percent of Cases Disposed of Within 3 Months *

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Found Guilty of DWI	58	67	73
Found Guilty of Reduced Charge	47	66	63

Table E-3 compares 1974, 1975, and 1976 for the percent of cases disposed of within 3 months. As can be seen the court process has been accelerated markedly since 1974.

*Excludes 6% of total cases resulting in acquittal or dismissed.

Table E-4

Percent of All Cases Disposed of Within
X Months - 1976, 1975 - by Division

Division	Percent Disposed of Within			
	3 Months		6 Months	
	<u>1976</u>	<u>1975</u>	<u>1976</u>	<u>1975</u>
1	74%	72%	91%	84%
2	54%	52%	89%	86%
3	66%	64%	86%	88%
4	60%	68%	81%	88%
5	66%	65%	87%	86%

As shown in Table E-4 only minor differences exist between court divisions.

Time lag for jury trials during 1976 and 1975 is shown in Table E-5. 74 percent of the cases which went to a jury trial in 1976 were disposed of within six months of the offense date, while 48% of jury trials during 1975 were completed within the same period.

Table E-5

Time Lag for Jury Trials During 1976 and 1975

Time Between Date of Arrest and Date of Disposition	Percent of Cases	
	<u>1976</u>	<u>1975</u>
3 months or less	37%	12%
4 to 6 months	37	36
7 to 9 months	21	17
10 to 12 months	5	14
More than one year	<u>0</u>	<u>21</u>
Total	100	100

