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DESIGNING A HEALTH/LEGAL SYSTEM: A MANUAL

Ralph K. Jones
Kent B. Joscelyn
John W. McNair

Highway Safety Research Institute
The University of Michigan
Huron Parkway and Baxter Road
Ann Arbor, Michigan 48109

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16. Abstract

This report presents a manual for use by state, county, and local organizations in improving their case-disposition process for persons arrested for drunk driving. These processes use the agencies of the traffic law system and the public health system to find and diagnose drunk drivers and to determine the combination of punitive and nonpunitive sanctions best suited to individual drivers. The manual presents information and methods at the system level and indicates information sources for use in developing more detailed designs.

The manual describes the general principles of health/legal systems and presents detailed descriptions and assessments of generic types of systems now operating. This material is supplemented with summary descriptions of ten representative systems. Methods for developing an analytic description of one's own health/legal system as a design tool are outlined. A three-step method for designing systems improvements is described and illustrated with examples drawn from the experience of operating health/legal systems. An introduction to program evaluation as applied to health/legal systems is provided. An extensive bibliography is included.

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METRIC CONVERSION FACTORS

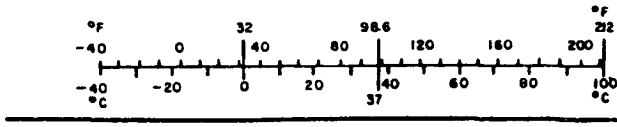
Approximate Conversions to Metric Measures

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

*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



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Ralph K. Jones
Kent B. Joscelyn
John W. McNair
Ann Arbor, Michigan

EXECUTIVE SUMMARY

This manual was written to assist jurisdictions in designing and improving health/legal approaches to their drinking-driving problems. Such approaches combine the elements of two large-scale societal systems, the public health system, which attempts to prevent and treat the underlying drinking problems, and the traffic law system, which uses punishment and the threat of punishment to deter driving after drinking. Health/legal approaches have been used in this way for many years but have become more formalized and widespread since NHTSA's Alcohol Safety Action Projects (ASAPs).

The manual draws together the experiences of many jurisdictions practicing the health/legal approach. Its focus is those parts of health/legal systems that determine whether a person who has been arrested for drunk driving represents a signficiant threat and, if so, the specification of punishment, treatment, or rehabilitative measures for the driver. The manual provides system-level information on these case-disposition aspects of health/legal systems and on the interaction of case-disposition elements (for example, courts and probation departments) with other elements (for example, treatment agencies). Methods for using this information for improving the case-disposition process in one's own health/legal system are also presented. Information sources for more detailed design of specific components of that processs (for example, presentence investigation) are indicated.

A functional approach is used for analyzing and designing these case-disposition processes. This entails breaking down a process into its component activities or functions and then determining how each function should best be performed to optimize the total process. Optimization is accomplished through a mostly qualitative procedure involving a methodical examination of each function and its

interaction with other functions. Functions are analyzed with respect to a series of criteria thought to be related to highway safety objectives.

The reader should constantly be aware that the health/legal concept, while reasonable and humane, is still experimental. Although there is some evidence that the legal approach sometimes can reduce alcohol-related crashes, evaluations have not yet shown that the health component has a positive effect on such crashes. However, few health/legal systems have been properly evaluated, so it cannot be said either that they do **not** have an effect. Users of this manual can contribute greatly to highway safety by cautiously applying the principles presented herein and then carefully evaluating their effect on traffic crashes.

The main substance of the manual is contained in five of its seven chapters. Chapter 2, A Framework for Analyzing Health/Legal Systems, lays the groundwork for subsequent chapters. It shows how health/legal systems are but one approach to managing a particular kind of risk that is a byproduct of our nation's highway transportation system. Management of this alcohol-crash risk involves the identification of the nature and extent of the alcohol-crash problem in a jurisdiction; the design, development, and implementation of new or improved methods for dealing with that problem; and the evaluation of the effect of those methods in terms of risk reduction. Some measures of alcohol-crash risk are presented along with data from selected studies. Past approaches to managing alcohol-crash risk are described briefly.

Chapter 2 then describes in more detail the general nature and effects of the health/legal approach to this risk-management problem. It is noted again that the approach attempts to reduce this risk by using the resources and methods of both the traffic law system and the public health system. The approach attempts to apply the combination of punishment and treatment best suited to each individual drunk driver.

In doing this, a health/legal system performs a series of

activities or functions. Public health functions are:

- case finding (identifying people who need help),
- diagnosis (determining the nature of the drinking-driving problem), and
- referral (sending people to facilities for treatment or education).

Traffic law system functions are:

- law generation (developing laws and regulations governing behavior),
- enforcement (the detection and apprehension of legally-impaired drivers),
- adjudication (the determination of the guilt or innocence of an individual charged with a violation of a drunk-driving law), and
- sanctions (the imposition of punishment or other requirements on the guilty parties).

Chapter 3 shows in detail how operating health/legal systems perform these basic functions. The purpose is to provide ideas and information for use in subsequent chapters of the manual. Current systems are classified according to the process they use in disposing of drunk driving cases. Four basic types of case-disposition processes are identified:

- reduced charge,
- probation,
- reduced sentence, and
- administrative.

In **reduced-charge** processes, the system trades a reduction or dismissal of the original drunk-driving charge for participation in a treatment program (we use the term "treatment" to indicate the complete range of nonpunitive sanctions, including education programs, group therapy, hospital inpatient treatment, etc.).

Probation processes are the most common mode of case disposition. Participation in a treatment program is gained as a condition of probation. In **reduced-sentence** processes, the punitive sanctions are reduced or suspended to obtain the defendant's promise to be treated. **Administrative** processes use nonjudicial administrative agencies to coordinate the health functions. The inducement for participation in treatment is usually a reduction in the period of suspension of the driver's license. Health/legal systems often use "hybrid" processes composed of two or more of these "pure" processes.

Chapter 3 concludes that all of these types of case-disposition processes share certain characteristics. First, they all use some kind of **inducement** to get the defendant to participate in treatment, since a defendant can rarely be forced to participate in a treatment program against his will. Second, the systems tend to have key **resources available** during their startup and operational phases. These include highly motivated individuals and groups, startup funding (often from a special grant), and an initial capability for treating referred drivers. The ability to provide **critical information** at key decision points is a third common characteristic among health/legal systems. Such information is usually provided in diagnostic reports and treatment supervision reports. A fourth characteristic is the existence of **favorable attitudes** among system personnel. The enthusiasm and efforts of key "charge agents" in a jurisdiction tend to enhance these attitudes. Finally, all active health/legal systems seem to have a **favorable institutional and organizational climate** for operations. This climate is characterized by viable health and legal components and by workable arrangements for interfacing those components.

Chapter 3 finds that no single set of characteristics is "optimal" for all jurisdictions. Each jurisdiction is different from all other jurisdictions and therefore has to determine which attributes are best suited to its own unique operating environment. (Methods for doing this are described in Chapters 4 and 5.) Nevertheless, generally favorable and unfavorable attributes can be identified.

For example, reduced-charge processes tend to be more efficient and to take less time in sanctioning drunk drivers. Their most serious shortcoming occurs when they reduce a drunk driving charge to one that is not alcohol-related, thus creating a problem in diagnosing repeat violators. Probation processes usually do not have this problem, but tend to be relatively costly and more prone to delays because of their more formal procedures. Reduced-sentence processes tend to be less formal than probation processes, but may lack "intensity" in performing their health functions. Administrative processes are often more uniform and tend to have high diagnostic rates and better record systems. On the other hand, they are less flexible, and may add more steps to the case-disposition process.

Chapter 4 presents a method for developing an important tool for system design, a comprehensive and analytically rigorous description of one's present health/legal system. The purpose of the system description is to serve as a surrogate "model" of the system so that the effects of possible changes to the system can be analyzed in advance of their actual implementation.

The system description is divided into three parts that parallel the three steps of the risk management process outlined in Chapter 2:

- description of the drinking-driving problem that is being addressed by the system,
- description of the health/legal system itself and the environment within which it operates, and
- description of the performance of the system in meeting the objectives of each of its functions.

Information needs for each of these parts and methods of acquiring such information are discussed in detail.

Chapter 5 shows how the information about other health/legal systems and the descriptions of your system can be used in planning and designing changes to your system. Again, the method described is rooted in the risk-management framework and involves three areas of

analysis:

- identification of problems and causes of problems in your present system,
- development of alternative strategies for solving these problems, and
- selection of a preferred strategy for detailed design and implementation.

A health/legal problem is defined as an inadequate level of performance created by the failure of a system to meet certain operating criteria. The problem-analysis method is illustrated through examples based on the experiences of real health/legal systems. Problems are analyzed to see how they are related to other problems. Some strategies for breaking up these "problem chains" are then outlined, and the possible effects of the strategies on critical areas of system performance are considered. These impact areas are: law generation, enforcement/case-finding, adjudication/diagnosis, sanctions/referral/treatment, fairness/humaneness, public attitudes, cost, time, and implementation requirements.

Chapter 6 introduces the subject of evaluation as a critical element of health/legal system design. The chapter is concerned with general principles and methods of evaluation as they apply to health/legal systems, but does not present the detailed procedures that are contained in existing manuals on highway safety evaluation.

Three elements of an evaluation program are briefly discussed in Chapter 6:

- developing an experimental design,
- collecting and analyzing data, and
- presenting and using evaluation results.

The first element is the most important of the three. The true experimental design (which compares a changed system to a system that is identical in every respect except for the changes) is recommended

where practical. Otherwise, an approximation of the experimental design (that is, a quasi-experimental design) should be used.

Data needs and planning requirements for meeting those needs are also identified in Chapter 6. The data include those that describe the inputs that changed the system (for example, amount of additional funds) and those that describe the outputs of the system (that is, performance and impact).

Both management and technical reports are needed for documenting the results of an evaluation. The reports should be produced during as well as after the period of evaluation, but the final evaluation report will be most important. The final report should describe: the health/legal system and how it was changed; the evaluation design; and the effects of the changes on performance, impact and efficiency of the system.

Chapter 7 presents some concluding remarks on some critical issues in designing, planning, and evaluating health/legal systems. The need for constant and careful monitoring of system operations is stressed.

A list of selected readings is given at the end of Chapters 2 through 6 of the manual. An overall bibliography is presented at the end of the manual.

Appendix A describes how information on operating health/legal systems was collected during the project. The appendix summarizes some of the findings gleaned from the data and presents summaries of ten case studies conducted during the project.

Appendix B contains forms for use in developing a system description, and Appendix C lists the single agency in each state that coordinates alcohol programs. A brief user's guide is provided at the beginning of the manual.

USE OF THE MANUAL

This manual was created to provide information about current health/legal systems, and to identify methods for using this and other information to design new or improved health/legal systems. Information about the nature of health/legal systems is provided in several levels of detail. Chapters 1 and 2 give a brief overview of the origin and principles of health/legal systems. They also develop the structure used in the remainder of the manual. These chapters should be useful to individuals who are seeking more knowledge about the total scope of health/legal system operations, but who are not interested in details. Persons wanting more detailed information should also read these two chapters, because they introduce concepts and terminology that are used throughout the manual.

Chapter 3 provides a second level of detail about current systems. It can be read straight through if desired, but most readers will find it more useful as a reference source. Readers who are interested in applying the system design methods in Chapter 5 should first read the summary to Chapter 3.

The third level of detail about current systems is presented in Appendix A. It contains summary descriptions of actual operating systems of the types that are described more analytically in Chapter 3. Individuals who have been trained in the case-study approach or who prefer to do their own analysis of current systems may find Appendix A particularly useful.

Chapters 4, 5, and 6 are concerned with methods. Chapter 4 is best skimmed on a first reading to understand why a good system description is needed and to get a rough idea of what such a description should contain. The reader may wish to returen to Chapter 4 (and supplemental material in Appendix B) when starting to plan a specific design program. Also, some readers may want to develop a system description as a management tool for their existing system, even though no design changes are planned.

Chapter 5 deals explicitly with the process of designing

health/legal systems. The first section tells how to identify problems and their causes, while the second and third sections describe methods for developing and selecting strategies for solving problems. Readers who have already isolated system-problems and are looking for ideas and methods for solving them will be more interested in these last two sections. Also, the need for a good system description becomes more apparent in the section on selecting change strategies and in the next chapter, which introduces the subject of evaluation.

Readers who are already knowledgable about evaluating social programs can skip Chapter 6 or merely skim through it. This chapter is designed for persons without specialized expertise in statistics and related disciplines, but who need to understand basic principles and concepts applicable to health/legal system evaluation. Most people who manage, coordinate, and operate health/legal agencies fall into this category.

Finally, the reader should be aware that this manual is not a "cookbook" full of recipes for developing successful designs. The plain fact is that no one can give you detailed step-by-step instructions on how to design your system, mainly because your design problem (that is, your laws, your institutions, your staff, and your current procedures) is unique. Also, health/legal system design is more an art than a science; we do not yet know what combination of ingredients makes the best system.

Instead of a cookbook, we offer information, principles, and methods, along with some hints on how to put them all together. The design itself must be tailored to your needs, and you can do that best.

CONTENTS

1
Introduction

This manual was prepared under a National Highway Traffic Safety Administration contract (number DOT-HS-7-01812) to develop a model alcohol safety health/legal system. The manual was developed during the period between October 1977 and February 1979. The objective of the project was to analyze factors affecting the application of adjudicative approaches to the drinking-driving problem and to develop a manual for applying the results of that analysis to designing new or improved health/legal systems.

ORIGIN AND NATURE OF THE HEALTH/LEGAL APPROACH

Over the past fifteen years the public has become increasingly aware of the role of drunk drivers in highway crashes. This has led to a sharp increase in attempts to reduce alcohol-crash losses. All levels of government and the private sector as well have gotten involved. While a variety of remedies have been suggested through these efforts, most of those that have actually been tried have involved social systems that have always dealt with such problems.

Our legal system has been the primary formal mechanism for controlling undesirable behavior in our society and has been used most often in new programs for controlling the behavior of drunk driving. Passing laws proscribing drunk driving and stipulating punishments for violating those laws, it was thought, would deter people from drunk driving and diminish the problem. More recently, another school of thought has arisen, envisioning drunk driving as an illness and public health problem that could and should be treated rather than punished. This health approach has been combined with the legal approach in many jurisdictions, resulting in what Lyle Filkins (1969) first called a **health/legal** approach.

The effectiveness of all of these approaches in reducing crashes involving drunk drivers has yet to be established, although there is

some evidence to support the premise that a carefully designed legal approach can deter some individuals from drunk driving (Ross 1973; Levy et al. 1978; Hagen 1978). The legal, health, and health/legal approaches, while based on reasonable assumptions, still must be regarded as experimental until better scientific evidence of their effects on crashes becomes available.

Since the inception of NHTSA's Alcohol Safety Action Projects (ASAP), the number of jurisdictions practicing the health/legal approach has increased rapidly. Most large and many smaller jurisdictions now have formal procedures for applying an integrated combination of health and legal resources to reduce alcohol-related crash losses. As a result, much new information has been generated about the processes health/legal systems follow. This information can be useful both to jurisdictions that already have a health/legal system and wish to improve it, and to jurisdictions that are considering trying the approach for the first time.

OBJECTIVES OF THE MANUAL

This manual will assist those who wish to continue the health/legal experiment. It is based on the actual experiences of jurisdictions that have tried hard to make the approach work. The information should help other jurisdictions to design, plan, and evaluate health/legal processes that are consistent with highway safety principles. In addition, evaluation of these "second-generation" systems will help test the health/legal concept itself, thus providing a basis for better future-generation systems.

With the manual's help you should be able to determine the requirements of a health/legal system for your jurisdiction and prepare plans for designing and evaluating such a system.

Specifically, it will help you to:

- define the drinking-driving problem in your jurisdiction,
- describe your jurisdiction's present legal or health/legal approach to that problem,

- identify strategies for improving that approach,
- select a preferred strategy for implementation, and
- initiate planning for evaluating the selected strategy.

The manual is aimed primarily at personnel in the agencies and institutions that participate in case-disposition.

- judges,
- prosecutors,
- defense counsels,
- probation officers,
- staff of driver license agencies,
- court administrators, and
- health staff involved in diagnosis, referral, and supervision.

We hope that the manual will also be useful to members of agencies and institutions that support and interact with the case disposition components, for example:

- police officers,
- legislators,
- city/county/state controllers,
- treatment performers,
- citizens groups, and
- alcohol beverage control authorities.

SCOPE AND APPROACH

The manual deals with many facets of the health/legal process, but, as is implied above, is primarily concerned with case-disposition. As used here, the term "case-disposition" means:

> The determination of whether a person who has been arrested for drunk driving represents a significant threat and, if so, the specification of punishment, treatment, and/or rehabilitative measures for the driver.

The elements of the health/legal process that locate the drunk-driving cases in the first place (that is, law enforcement agencies) and the elements that punish, treat, and rehabilitate the

drivers are considered only insofar as they affect the case-disposition process. Thus, the manual does **not** provide directions for deploying police officers to catch drunk drivers or for conducting alcohol-education classes and group therapy sessions for drivers who are sent there by case-disposition agencies. Instead, it provides information at the system level to enable you to develop the case-disposition **process** best suited to your jurisdiction. Sources of information for designing the detailed **components** of a case-disposition process (for example, how to conduct a presentence investigation) are also identified, but specific component designs are not discussed in detail in the manual.

Also, the manual focuses on health/legal systems that direct a significant fraction or absolute number of cases into treatment and rehabilitation programs. In other words, we deal mostly with systems that favor health alternatives in the ultimate disposition of their cases. We use the term "treatment" throughout this manual in a generic sense to encompass all of the nonpunitive sanctions that are imposed on drunk drivers by the health/legal system. Such sanctions include educational programs, group therapy, individual therapy, Alcoholics Anonymous, hospital inpatient treatment, and all other efforts to educate, treat, and rehabilitate drunk drivers.

The design criteria used throughout the manual flow from subjectively determined relationships with highway safety, since there is presently no way of objectively determining such relationships. The word "design" as used here means an initial statement of the methods and resources that will be used in operating a health/legal system. The design process is cyclical in nature, each cycle producing a more refined version of the preceding cycle. This manual is concerned with the first of these cycles or with what might better be called "preliminary design."

Two basic approaches are followed in the manual. First, a framework for subjectively relating health/legal systems to highway safety objectives is laid out. This leads to a set of working objectives that can be used as a basis for system design. Specific

interrelated functions that can be performed to accomplish those objectives are then analyzed separately and in combination with other functions. Such a "functional analysis" provides a method through which your jurisdiction can identify system improvements best suited to its own operating environment.

The second approach is the use of the experience of operational health/legal systems as a basis for identifying generic types of systems. You can then relate your present system to one of these types and use information about that type to develop an appropriate system design.

The data for describing health/legal systems, the conditions under which they are found, and the performance of different kinds of systems were developed almost entirely during this project. Methods for analyzing system problems and for selecting strategies for solving these problems were also developed from this data base. Telephone contacts with thirty-two former ASAPs and fifty-four randomly selected non-ASAPs were made to develop broad descriptions of the attributes of current health/legal systems. The contacts were also used to select ten jurisdictions with a wide range of attributes for further, more in-depth study through on-site interviews. These jurisdictions were:

- Washtenaw County, Michigan
- Phoenix, Arizona
- Multnomah County (Portland), Oregon
- Pulaski County (Little Rock), Arkansas
- State of Maine
- State of Washington
- Park Forest, Illinois
- Columbus, Ohio
- Lafayette, Louisiana
- Greenville, South Carolina

Case studies of these jurisdictions were the source of most of the illustrative examples in the manual. Other sources of information on operating health/legal systems are contained in the bibliography.

ORGANIZATION OF THE MANUAL

The manual is presented in seven major sections. Following the present chapter (1), a structure for methodically examining health/legal systems is presented in Chapter 2, A Framework for Analyzing Health/Legal Systems. The structure relates the activities and agencies of health/legal systems to the overall societal objective of controlling alcohol-crash risk.

Chapter 3, Types of Health/Legal Systems, defines and discusses the spectrum of health/legal systems now in operation. The chapter shows how diverse the systems are and how much they vary according to the demands of their environments. Illustrative examples based on information developed and analyzed in this project are used extensively.

Chapter 4 of the manual, Describing and Classifying Health/Legal Systems, provides a method for developing a baseline description of any jurisdiction's health/legal system and for placing that system within the framework developed in the two preceding chapters. The system description is an essential tool for designing and evaluating a health/legal system. Information needed for describing and classifying one's own system is identified, and steps you can take to develop such information are outlined.

Chapter 5, Designing and Planning Changes to a Health/Legal System, describes methods and actions important in deciding which changes you should adopt. A method for planning a program of change is identified and discussed.

Chapter 6, Evaluating Your Health/Legal System, discusses the need for evaluating system changes. Important considerations in developing a useful evaluation program are outlined.

Chapter 7, Epilogue, summarizes some key concepts of the manual and its use. A list of selected readings in areas related to health/legal systems is presented at the end of Chapters 2 through 6. Supplementary information is contained in appendices.

Appendix A describes data collection procedures used in the

project and summarizes some findings based on the data. It also contains summaries of ten case studies of health/legal systems. Appendix B presents forms for collecting data to describe a health/legal system, and Appendix C lists each state's single authority for alcohol programs. A bibliography follows.

2

A Framework for Analyzing Health/Legal Systems

The preceding discussion has indicated that a health/legal system is a complex mechanism involving both the public and private sectors of our society. Thus, any effort to create or modify such a system will also be complex. Careful analysis is necessary to understand exactly what results are being sought in each health/legal system and to determine how specific actions by specific groups or organizations will help to achieve those results.

This chapter presents a framework for conducting such an analysis. It describes a way of relating the highway safety objectives of health/legal systems to the activities and resources needed to accomplish those objectives. We show that the health/legal approach is just one way of managing the risk to society caused by alcohol-impaired drivers, and we describe in general terms the nature of the alcohol-crash problem in the United States. Finally, we provide a general working definition of the term "health/legal system" to serve as a basis for the more detailed definitions and descriptions that are presented in later sections.

MANAGING HIGHWAY CRASH RISK: GENERAL CONSIDERATIONS

The complex of vehicles, drivers, and highways that comprises our nation's highway transportation system brings many benefits to society, including individual mobility, rapid transportation of goods, and the social and economic well-being that stem from the operations of the system. The system also produces negative effects: traffic crashes and the accompanying deaths, injuries, and property losses. Environmental degradation and the depletion of natural resources are other negative effects.

The highway safety process is aimed at maintaining an acceptable balance between some of these positive and negative effects. If society deems crash losses too costly, pressures arise to bring them

back into line. These pressures may result in new governmental agencies, new priorities and programs within existing agencies, or individual or civic efforts to improve highway safety habits. All of these organizations and individuals are concerned with reducing the probability of future losses, or risk, since past crash losses cannot be reduced.

Clearly, even the most effective actions will not eliminate all of the risk created by the highway transportation system. There will always be some chance of system dysfunctions and resulting losses. All that can be hoped for is a tolerable balance between the positive and negative aspects of the system. In a word, risk can only be managed.

A commonsense approach to managing alcohol-crash risk includes the following three steps:

1. Identifying the nature of alcohol-crash risk
2. Designing, developing, and implementing new or improved programs to reduce that risk
3. Evaluating the programs' risk reducton

Identifying and describing alcohol-crash risk will aid the subsequent choice of targets of risk-reduction programs. You should estimate for your jurisdiction the number of crash losses attributable to alcohol, tally the relevant characteristics of the highway transportation system, and understand the circumstances that generate alcohol-crash risk.

After describing the problem you must design and develop remedial programs. First, determine which people are most likely to endanger society through drunk driving. For example, in one jurisdiction middle-aged social drinkers might pose a greater alcohol-crash threat than older problem drinkers, and both groups may be more troublesome than teenage drinkers. After establishing priorities, you must decide how much of what kind of resources to direct at the highest-priority target groups, and then select and implement the most approriate strategies and tactics.

The selection of these strategies and tactics must follow a

systematic process. You will have to consider the nature, magnitude, dynamic characteristics, costs, and societal acceptability of possible actions. Of course, after studying possible actions you might also conclude that additional programs or changes will not be helpful in your jurisdiction.

After implementation, the selected risk-management strategies and tactics must be evaluated. The purpose of evaluation is to determine the extent to which a program actually reduced risk. If it worked, and for a reasonable price, then it might be desirable to continue the program and to consider its use in other jurisdictions. If the program appeared not to reduce risk appreciably or was too costly or unpopular, then it should be either improved or discarded. It is important, though, that the findings of an evaluation be documented so that other jurisdictions can benefit from the experience.

This manual provides a road map for applying risk management concepts within the health/legal approach. This approach is described later, both generally and specifically as it has been applied in various jurisdictions. Our major concerns are steps two and three of the risk management process but these steps will always be considered in the context of the first step. Chapter 5 deals explicitly with step two, using information and concepts drawn from chapters 3 and 4. Chapter 6 addresses step three. A more detailed discussion of management of the traffic crash risk in general can be found in Joscelyn and Jones (1978).

NATIONAL ALCOHOL-CRASH RISK

Risk identification is the first step in risk management, whether we are seeking to manage risk at the national, state, local, or even the individual level. In many respects, the national level is the best starting point for identifying alcohol-crash risk at any level, because a national analysis provides a baseline for comparison and will suggest areas for further development or for more detailed analyses.

This section presents a brief overview of this alcohol-crash

problem at the national level. The data are taken from a recent NHTSA-sponsored review of the state of knowledge about alcohol and highway safety (Jones and Joscelyn 1978).

Alcohol-crash risk was suspected to be serious long before there was hard scientific evidence of its nature and extent. Since the 1930s a wide range of epidemiologic and behavioral studies have been conducted and indicate the existence of a significant alcohol-safety problem in the United States. Most of these studies relate alcohol-impairment and alcohol-crash risk to the amount of alcohol in the blood. **Blood alcohol concentration** (BAC) is the measure of blood alcohol that is used in these studies. It is stated in terms of the weight of a quantity of alcohol in a given volume of blood. In the United States it is common to use grams per 100 milliliters. The resulting measurement is then stated in terms of the percent of alcohol in the blood, measured by weight per unit volume. For example, if a given measurement showed .01 grams of alcohol in a 100 milliliter sample of blood, the result would be interpreted in the United States as ".01% w/v blood alcohol concentration (BAC)."

The body, on the average, requires about an hour to eliminate .015% w/v of alcohol, which is the amount contained in a typical "drink" (e.g., 1-1/2 ounces of 100-proof whiskey, six ounces of wine containing 12% alcohol, or sixteen ounces of beer containing 4-1/2% alcohol). If a person continues to drink more than about one drink per hour, his BAC will rise, and he eventually will become intoxicated. Heavier individuals and persons who have just consumed a heavy meal will in general require a higher rate of consumption of alcohol to reach a given BAC.

When a person's BAC reaches .10% w/v, he will be presumed by law to be too intoxicated to drive in nearly all states. Different jurisdictions use different terms in describing drivers who are defined by law to be intoxicated by alcohol, for example, Driving While Ability Impaired (DWAI) and Driving While Intoxicated. Sometimes, statutes use the term "impairment" to indicate a lower level of performance degradation than that associated with

"intoxication." In this manual, the term "drunk driving" is used generically to describe driving with an illegally high BAC.

The research on the alcohol-crash problem indicates that nearly one-half of all drivers who are killed in highway crashes each year were legally too intoxicated to drive (that is, had a BAC of .10% w/v or more) (Figure 2-1). Many drivers involved in less-serious crashes (perhaps five percent to thirteen percent) were also legally too intoxicated to drive, and more than one-third of all fatally injured adult pedestrians had BACs of .10% w/v or more (Figures 2-2 and 2-3). Of course, involvement is not the same as causation, but we do know that the risk of being involved in a serious crash is greater if one's BAC is .10% w/v or more than it is if one's BAC is .05% w/v or less (Figure 2-4).

Male drivers are involved more frequently than female drivers in serious alcohol-related crashes, but females may have a higher probability of crashing when they do drink. Similarly, drivers in the twenty to sixty-year-old age bracket are involved more often in alcohol-related crashes than other drivers, but younger and older drivers have a higher crash risk after drinking. Other characteristics associated with a higher than average involvement in and/or risk of alcohol-related crashes are:

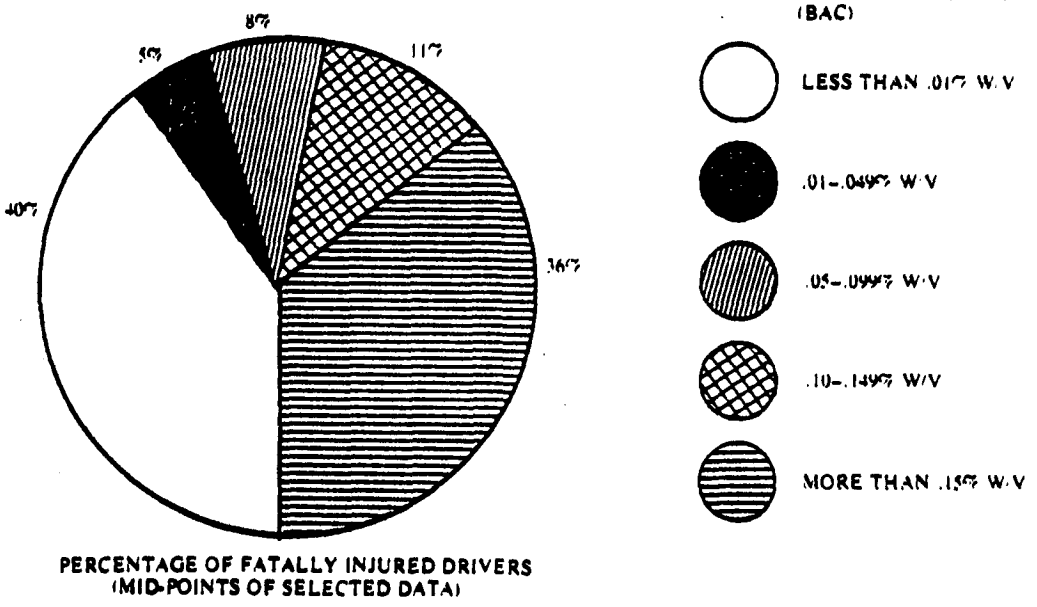
- heavy drinking and severe drinking problems
- preference for beer over other alcoholic beverages
- frequent nighttime driving
- frequent weekend driving
- history of prior arrests for drunk driving

Of course, none of these characteristics can be used to establish that any one person with such characteristics or habits will cause a crash.

It is estimated that in 1975 as many as 15,200 fatal crashes, 120,000 serious injury crashes, and 765,000 property damage crashes could have involved drivers whose BACs exceeded the legal limit (Figure 2-5). The cost to society of these crashes could be as high as $6 billion (Jones and Joscelyn 1978).

Figure 2-1
Blood Alcohol Concentrations
of Drivers Killed in Non-Pedestrian Crashes (U.S.)

FATALLY INJURED DRIVERS WITH
BACs IN GIVEN RANGES



FATALLY INJURED DRIVERS WITH BACs EXCEEDING GIVEN AMOUNTS

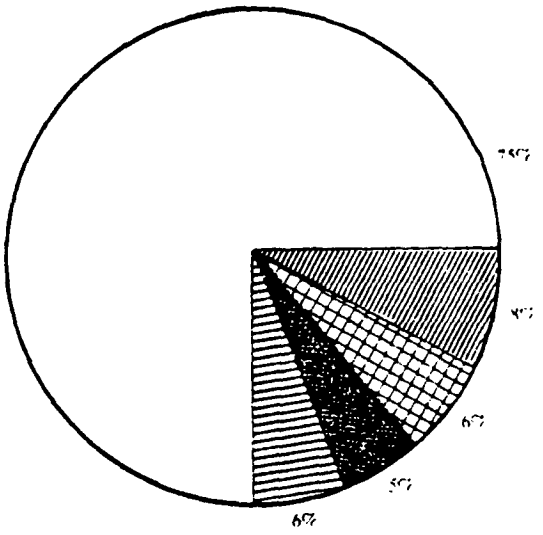
BAC	PERCENTAGE OF FATALLY INJURED DRIVERS	
	RANGE	MID-POINT OF RANGE
.15% W/V OR MORE	29–43	36
.10% W/V OR MORE	40–55	47
.05% W/V OR MORE	50–60	55

DATA FROM CALIFORNIA, VERMONT, AND MICHIGAN, 1962–1969 (Neilson 1969; Waller et al. 1970; Perrine, Waller, and Harris 1971; Filkins et al. 1970).

Source: Jones and Joscelyn 1978

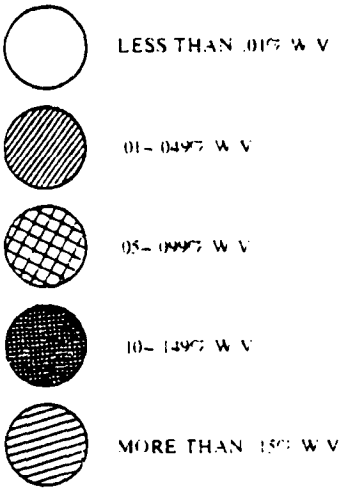
Figure 2-2
Blood Alcohol Concentrations
of Drivers Involved in Personal Injury Crashes (U.S.)

DRIVERS WITH BACs IN GIVEN RANGES



PERCENTAGE OF DRIVERS
(MID-POINTS OF SELECTED DATA)

BLOOD ALCOHOL CONCENTRATION
(BAC)



DRIVERS WITH BACs EXCEEDING GIVEN AMOUNTS

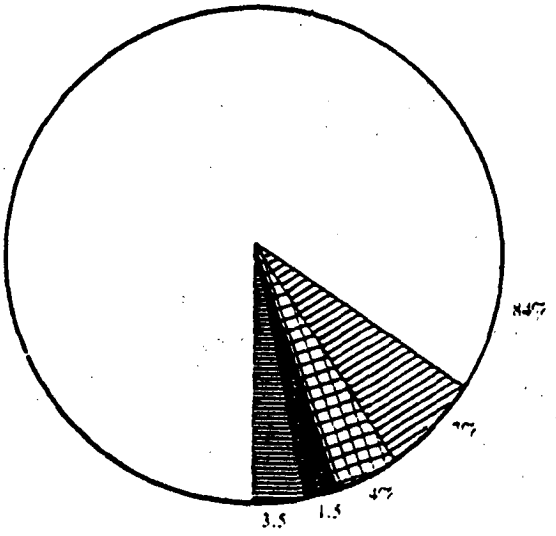
BAC	PERCENTAGE OF INJURED DRIVERS	
	RANGE	MID-POINT OF RANGE
.15% W/V OR MORE	5–7	6
.10% W/V OR MORE	9–13	11
.05% W/V OR MORE	14–19	17

DATA FROM HUNTSVILLE, ALABAMA (Farris, Malone, and Lilliefors 1976) AND GRAND RAPIDS, MICHIGAN (Borkenstein et al. 1964).

Source: Jones and Joscelyn 1978

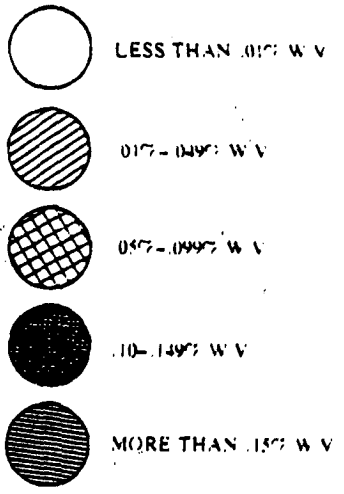
Figure 2-3
Blood Alcohol Concentrations of Drivers in Property Damage Crashes (U.S.)

DRIVERS WITH BACs IN GIVEN RANGES



PERCENTAGE OF DRIVERS
(MID-POINTS OF SELECTED DATA)

BLOOD ALCOHOL CONCENTRATION (BAC)



DRIVERS WITH BACs EXCEEDING GIVEN AMOUNTS

BAC	PERCENTAGE OF DRIVERS
.15% W/V OR MORE	1.5
.10% W/V OR MORE	5
.05% W/V OR MORE	9

DATA FROM GRAND RAPIDS, MICHIGAN, 1962-1963 (Borkenstein et al. 1964).

Source: Jones and Joscelyn 1978

Figure 2-4
Relative Probability of Involvement in Fatal Crashes
for Drivers with BACs at Given Levels

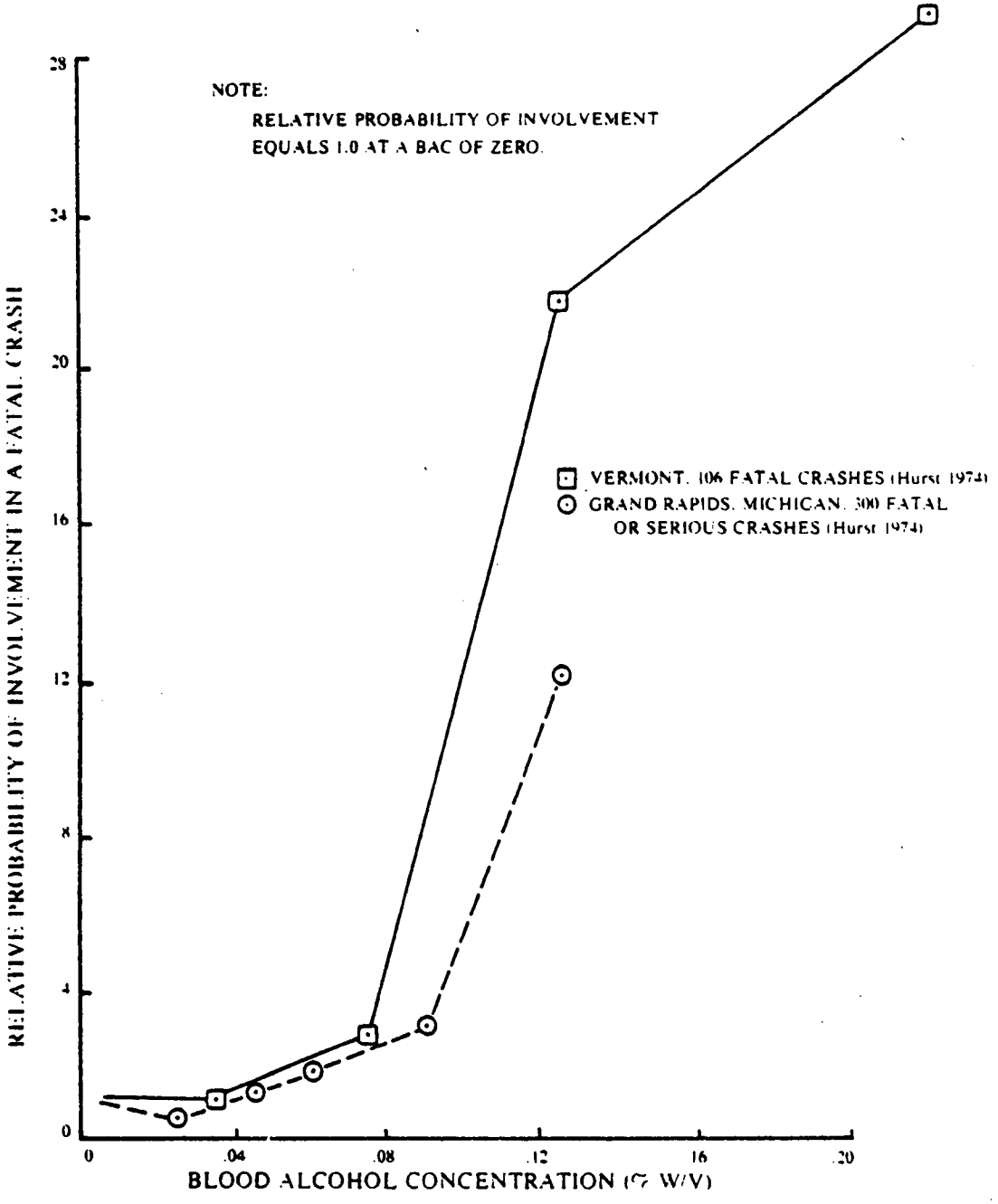
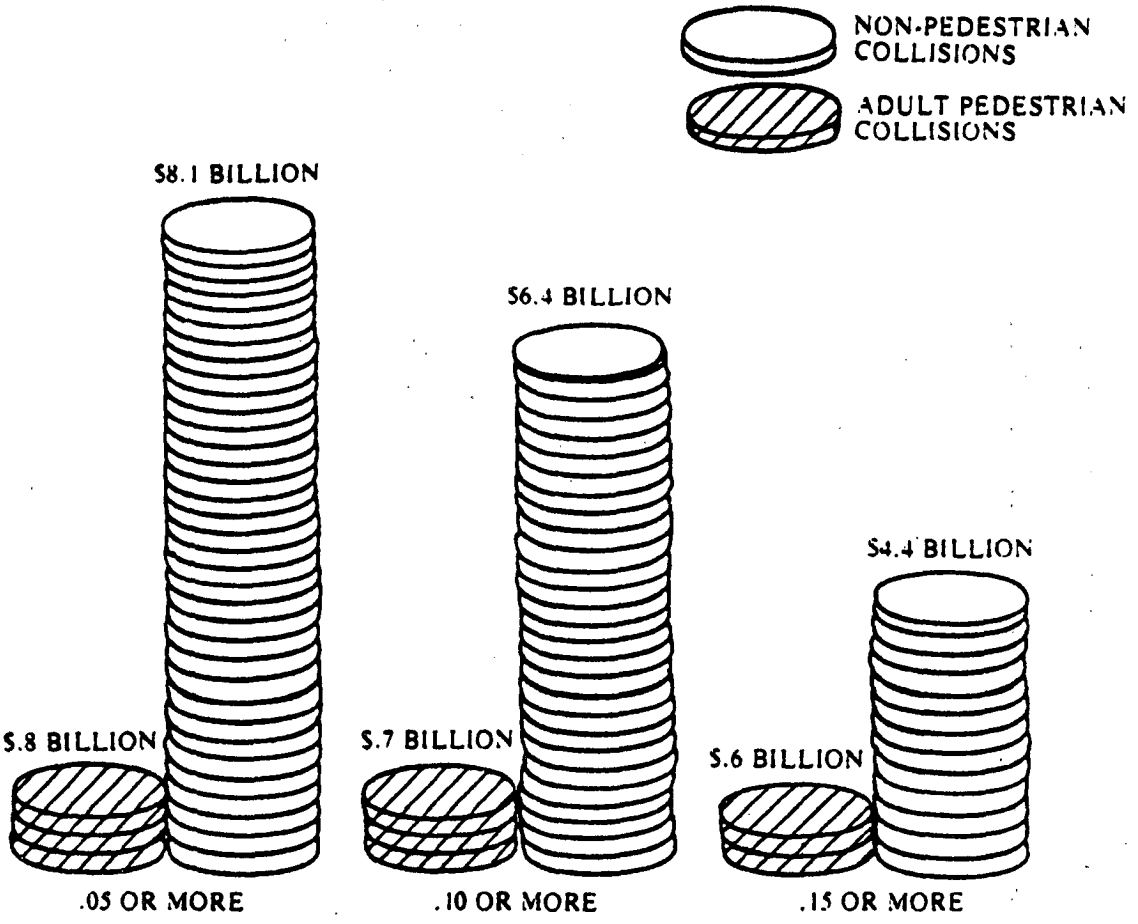


Figure 2-5
Annual Economic Cost of Alcohol-Related Crashes (U.S.)



Source: Jones and Joscelyn 1978

TRADITIONAL APPROACHES TO MANAGING ALCOHOL-CRASH RISK

Although we are concerned only with the health/legal approach to the alcohol-crash problem, it is useful to see how this approach compares to others that have been tried. Jones and Joscelyn (1978) have placed past approaches in the following five categories:

- legal
- health
- public information and education
- technological
- systems

Legal approaches to controlling crash losses due to drinking-driving are based on a set of official rules (laws) that specify and prohibit drinking-driving behaviors believed to present unacceptably high risks to society. Failure by the driver to comply with these rules results in punishments (e.g., fines, jail sentences, loss of driving privileges) that are believed to act as a deterrent to the prohibited behavior. Some laws are related less directly to drinking-driving, for example, implied consent laws that require drivers to submit to a BAC test if asked to do so after being arrested for drunk driving. The legal approach also supports the application of "sanctions" by other less formal systems, for example, increased insurance rates after a conviction for drunk driving. Such support is provided through the conviction of individuals for drunk driving offenses and the subsequent availability of conviction records to insurance companies for adjusting the insurance rates of the drivers.

Health approaches are aimed at the underlying drinking problems that often exist among individuals who drive with high BACs. Various treatments and therapies (such as Alcoholics Anonymous) are applied to such individuals in an effort to induce more moderate drinking habits or to eliminate drinking entirely. Rehabilitation and education programs (such as drunk-driver schools) for all types of drinking drivers are also included in this category.

Public information and education (PI&E) approaches attempt to reduce the incidence of drinking-driving by campaigns informing and educating various population groups about the nature of the problem. Such programs address drinking drivers directly by attempting to get them to refrain from drinking-driving in the future or indirectly by attempting to enlist the support of other persons in actions against drinking-driving. A television commercial designed to motivate persons to drive an intoxicated individual home from a party is an example of the indirect approach. The public information and education (PI&E) approaches are most commonly used in combination with other approaches (e.g., legal), both to inform the public about the actions that will be undertaken to control drunk driving and to create a climate of public support for the alcohol-safety program.

Technological approaches use modern technology to interrupt the sequence of events leading to drinking-driving. A wide range of technologies has been suggested for such applications, from pharmaceuticals designed to speed up the sobering process to devices for warning drivers about the presence of a car with a drunk driver.

Most past and proposed programs for dealing with the drinking driver employ two or more of these four approaches simultaneously. For example, the health/legal approach, which is the subject of this manual, is a combination of the health and legal approaches. Programs that methodically employ several approaches have been called **systems approaches** in the literature.

Specific target groups have not been well defined in most past alcohol-safety programs. The National Highway Traffic Safety Administration's recent Alcohol Safety Action Projects (ASAP) are a notable exception to this rule. They identified the problem drinker-driver as a major target group requiring treatment of its underlying drinking problems. ASAP designated so-called social drinker-drivers as a secondary target group for more traditional legal sanctions and driver education (U.S. Department of Transportation 1975a).

A lack of adequate evaluation makes it virtually impossible to say

whether any of the above approaches have actually reduced alcohol-crashes. Only one large-scale program, the British Road Safety Act of 1967 (which employed the legal approach), has clearly been shown to have reduced crash losses involving drinking drivers, and even then the effects of that program were short-lived (Ross 1973). In some other programs (for example, ASAP) evaluations suggest possible small reductions in alcohol-related fatal crashes involving social drinkers in some jurisdictions (Levy et al. 1978). A recent study in California (Hagen et al. 1978) found that convicted drunk drivers whose licenses had been suspended or revoked had better subsequent traffic safety records than drivers who participated in court-referred treatment programs. Votey's (1976) analysis of legal approaches in Scandinavian countries found that their relatively severe legal sanctions strongly reinforced an individual's tendency not to drive after drinking. However, no scientific evaluations to date have shown reductions in alcohol-related crashes as a result of treatment programs that employed health or health/legal approaches (Jones and Joscelyn 1978). Operating systems can help close this "evaluation gap" by evaluating their own programs. Requirements and methods for doing this are discussed throughout this manual.

HEALTH/LEGAL SYSTEMS: GENERAL NATURE AND EFFECTS

Up to this point our definition of the term "health/legal system" has been stated in broad terms. This section provides a more detailed definition better suited for the analyses that must accompany and support the design of a system. Consistent with the risk management process outlined above, a health/legal system can be defined in terms of its objectives, its strategies to accomplish those objectives, and its functions to implement those strategies.

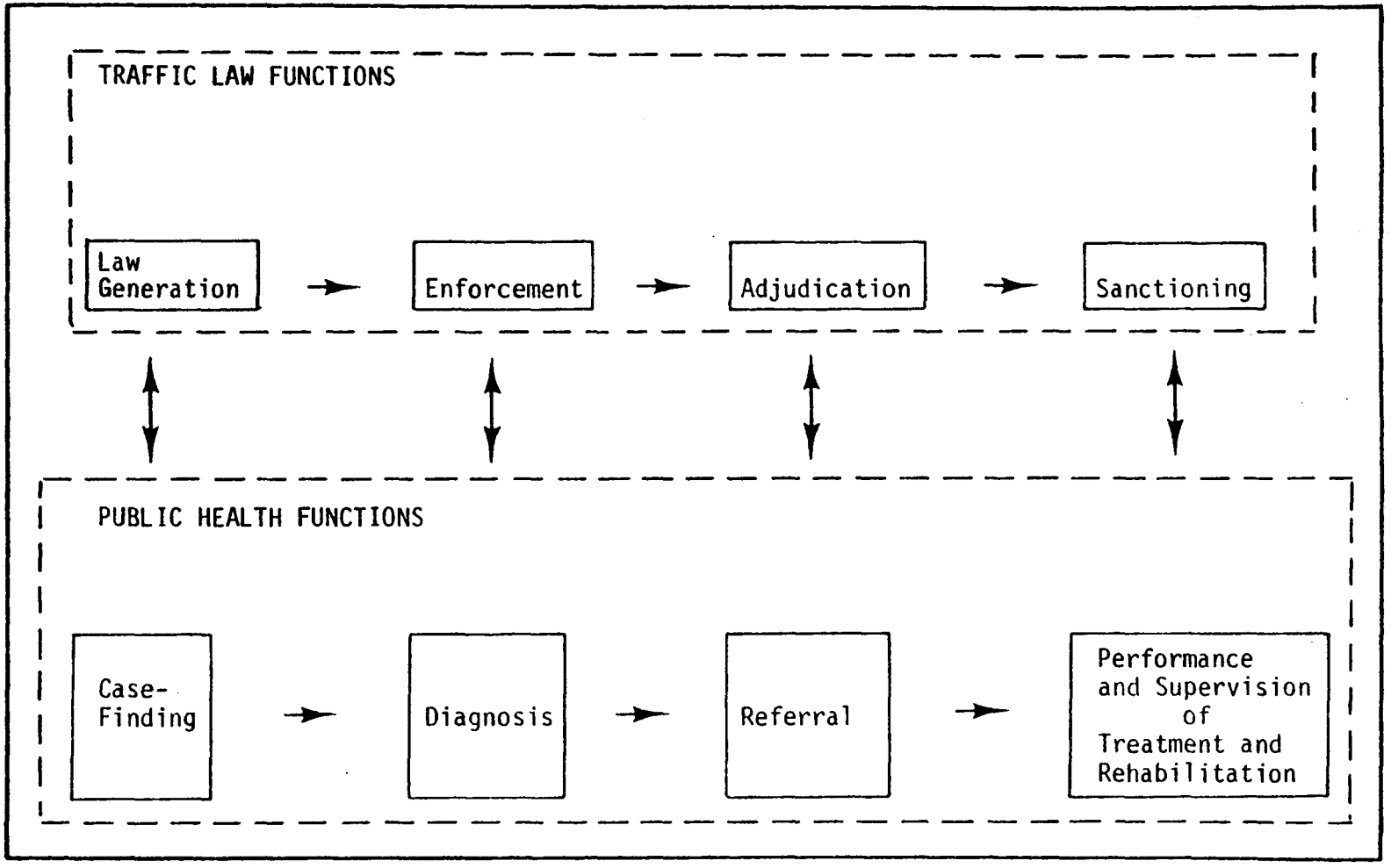
As a risk management system, its most general **objective** is to reduce the risk of alcohol-related crashes. More specific objectives may exist in each health/legal system, for example, the reduction of fatal crashes caused by male drivers with severe drinking problems. Often, a health/legal system will have other objectives that are

unrelated to highway safety, for example, providing employment or revenue. Within the framework we are using here, these nonhighway safety objectives become constraints that limit or restrict activities to reduce alcohol-crash risk. Many other types of constraints also exist, such as, the amount of available resources, the obligation to treat accused drunk drivers fairly and consistently, and the need to maintain public support of the system.

The general **strategy** of health/legal systems is to use the resources and methods of the traffic law system and the public health system to reduce the incidence of drinking-driving among an identified target group. A basic tenet of this strategy is that neither the traffic law system alone, with its punishments, nor the public health system alone, with its treatments, can adequately deal with the problem. The combined resources of both systems are needed to bring about the desired behavioral changes through the application of individually tailored mixtures of punishment and treatment. Thus, the health/legal system must apprehend and arrange for the punishment and treatment of drinking drivers in the target population.

The health/legal system consists of a combination of functions originating in each jurisdiction's traffic law and public health systems (see Figure 2-6). From public health come **case finding** (identifying people who need help), **diagnosis** of the nature of the drinking-driving problem, **referral** to an appropriate facility, and provision of **treatment and rehabilitation** best suited to the diagnosed problem. The treatment and rehabilitative programs could range from lectures on the effects of alcohol on driving performance to hospital inpatient treatment for alcoholism. From the traffic law system, the legal side, come **law generation** (development of laws and regulations governing drinking-driving behavior), **enforcement** (the detection and apprehension of legally impaired drivers), **adjudication** (the determination of the guilt or innocence of an individual charged with a violation of a drinking-driving law), and **sanctions** (the imposition of punishment or other requirements on the guilty parties).

Figure 2-6
Functions of a Health/Legal System



Here the major concern is the process through which individuals whom enforcement officials have identified as drunk drivers receive an "appropriate" combination of punitive and treatment sanctions. This involves the health functions of diagnosis, referral, and treatment supervision, and the legal functions of adjudication and sanctioning. We will be less concerned about the generation and enforcement of laws and the treatment and rehabilitation of drunk drivers.

Health/legal systems involve organizations from all three branches of government and from the private sector as well. In systems now operating, the health/legal functions and related subfunctions are interspersed among the agencies in an almost endless variety of ways. While the purely legal functions are always performed only by the traffic law system, the health functions may be performed by either or both systems. For example, case-finding is nearly always first performed by police officers in conjunction with the enforcement function of the traffic law system. However, a judge might "diagnose" a drunk driver and refer the driver to an alcoholism clinic where further diagnosis and referral to another treatment agency might occur. Probation personnel employed by the court or by a separate agency diagnose and recommend referral in some jurisdictions. In other jurisdictions, the prosecutor, the judge, or social workers from public or private organizations perform these functions. Treatment and rehabilitation programs are conducted by hospitals, clinics, alcoholism agencies at all levels of government, educational institutions, and many other organizations.

This variety of health/legal systems exists because each jurisdiction has a different drinking-driving problem and a different environment. Some jurisdictions have many alcohol-related crashes while others have relatively few (see Jones and Joscelyn 1978, Summary Report, pp. 11-20). Some jurisdictions are rural and others are urban. Laws for dealing with drunk drivers may be harsh or lenient; some judges may favor punitive sanctions while others encourage education and treatment. Prosecutors may be well informed

about the alcohol-crash problem or relatively poorly informed. One community may have a wide range of treatment facilities available and another may have a narrow range, and so on.

Thus, each jurisdiction must tailor its system to its unique problem and environment. No single approach will work in every jurisdiction. In fact, we do not yet know if any health/legal approach will accomplish its ultimate objective of reducing alcohol-crash risk. However, it is clear that if it is to reduce crashes and be consistent with risk management principles, the system must perform its functions effectively and efficiently. This means that the following must be accomplished:

1. Drunk drivers must be initially identified and brought into the system for subsequent action.
2. The nature of the drinking-driving problem of those who have been identified must be accurately determined.
3. Drunk drivers must receive the combination of punishments and treatments believed to be most appropriate to their diagnosed problem under the current state of the art.
4. All of this must be accomplished fairly and humanely, be supported by the public, and be achieved in a timely manner with a reasonable expenditure of resources.
5. The actions taken to reduce risk must be evaluated.

Note that the first three of these items are the working objectives of any health/legal system. They correspond directly to certain combined health/legal functions and could in fact be regarded as the **objectives** of those functions (see Figure 2-7). The fourth item is a statement of the **constraints** that limit or restrict health/legal system activities in pursuing these functional objectives.

Figure 2-7
Working Objectives and Functional Objectives
of Health/Legal Systems

Working Objectives of Total System	Functional Objectives	
	Legal	Health
Initially identify drunk drivers and bring them into the system for subsequent action	Enforce laws	Find cases
Accurately determine the nature of the drinking-driving problem of those who have been brought into the system	Adjudicate laws	Diagnose cases
Apply most appropriate combination of punishments and treatments to drunk drivers	Impose sanctions	• Refer to treatment • Supervise treatment • Provide treatment

SUMMARY

It is useful to view health/legal systems as means for managing the societal risks created by drinking drivers. To do so, the systems must define alcohol-crash risk; design, develop, and implement new or improved programs to reduce that risk; and evaluate the programs in terms of risk reduction.

Studies of alcohol-crash risk nationwide provide a starting point for problem definition at the local and state levels where most health/legal systems operate. Such studies clearly establish that drunk driving constitutes a significant societal risk in terms of death, injury, and economic losses. Health/legal systems should identify the priority components of risk in their own jurisdictions before considering new programs of risk reduction. When this is done, ultimate objectives can be stated in detail and the design process can proceed.

Health/legal system design involves the identification of functions that are believed to be related to these ultimate objectives and the efficient allocation of resources among these functions. At their most general level, health functions are case-finding, diagnosis, referral, and treatment. Top-level legal functions are law generation, enforcement, adjudication, and sanctioning. This manual concentrates on the diagnosis, referral, and treatment **supervision** functions of the health system, and on the adjudication and sanctioning functions of the legal system. We call this interconnected set of functions and their supporting resources the **case-disposition** process.

Operating health/legal systems are highly individualized to meet the needs and environments of specific jurisdictions. The next chapter of the manual describes the attributes of various kinds of systems to provide information for use in analyzing and improving your system.

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3

Types of Health/Legal Systems

The preceding chapters have provided a general definition of health/legal systems and have set forth a framework for analyzing such systems. This chapter examines existing systems in more detail. Specifically, it:

- describes characteristic types of health/legal system operations,
- identifies some of the environmental factors that seem to be associated with given types of systems, and
- discusses in qualitative terms the degree to which different types of systems are accomplishing their working objectives and meeting their operating constraints.

A number of attributes may be used to define characteristic types of system **operations**, for example:

- the type of process used in disposing of drunk driving cases,
- the way in which the health and legal functions of the system are performed,
- types of drunk drivers handled by the system,
- types of punishments, treatments, and rehabilitative measures offered, and
- methods used for managing and financing system operations.

Environmental factors include:

- the provisions of the statutes and regulations that influence system operation,
- the nature of the institutions that are involved in health/legal functions,
- the attitudes of the public and system personnel about

system operations, and

- the socio-politico-economic character of a jurisdiction.

Performance of health/legal systems is discussed in terms of indicators because of a lack of data for measuring performance quantitatively. Such indicators include:

- resources available to perform each function of a health/legal system,
- procedures that are used in each function,
- attitudes of the personnel who perform each function,
- information needed for each function,
- fairness and humaneness toward defendants,
- processing time, and
- processing cost.

Theoretically, the operational and environmental attributes could be combined in an almost infinite variety of ways to yield an almost infinite variety of types of systems. However, it is appropriate here to classify systems according to their case-disposition process and then discuss other operational and environmental attributes in relation to type of process. There will also be a discussion of characteristics shared by all health/legal case-disposition processes. The performance of various types of systems is discussed last.

This approach will illustrate the great diversity of health/legal systems but, more important, it will provide a basis for placing any given jurisdiction within a range of plausible alternatives. Thus, a jurisdiction with a certain set of operational and environmental factors can examine the designs and results of systems in similar jurisdictions. A method for developing alternative designs and for deciding which design is most appropriate for your jurisdiction is presented in Chapter 5.

Finally, the discussion in this chapter pertains only to systems that have active health/legal components. By "active" we mean systems that refer a large fraction (or absolute number) of arrested

drunk drivers to treatment programs and that have a clear commitment to making the health/legal approach work. The discussion is based primarily on our studies of systems we have observed first-hand (see Appendix A). Reference is made to specific active systems in some instances to illustrate particular points. Table 3-1 summarizes the attributes of case-study systems that are used as examples. More detailed descriptions of these systems are attached to Appendix A.

The state of knowledge about health/legal systems, while considerably more advanced than it was a few years ago, is still less extensive than we would like. Particularly, there is a lack of quantitative information on many aspects of system operation. Our approach in this chapter is to use quantitative information where possible and to augment it with qualitative information gathered in our interactions with staff from operating systems. In some instances, the synthesis of this information is subjective, resulting in statements that "many" systems have a particular attribute or that judges "usually" refer drivers in a particular way, etc. The reader should keep these inherent limitations in mind in following the descriptions and analyses in this chapter.

GENERAL DEFINITION OF CASE-DISPOSITION PROCESSES

Although it is true that no two health/legal systems are **exactly** alike, some are enough alike to be placed in common categories. From analysis of health/legal systems one can conclude that the most meaningful single attribute for classifying health/legal systems is the type of **process** used in disposing of drunk driving cases. The inducement that is used to get defendants to participate in treatment programs is the most useful feature to distinguish the type of case-disposition process employed. In general, two inducements are used to encourage treatment:

1. reduce the charge against the defendant, or
2. reduce the punishment imposed on the convicted driver.

Reduced-charge processes involve a bargain between the defendant and the prosecutor or adjudicator. The defendant agrees to

Table 3-1
Summary of Attributes of H/L Systems Visited by Project Staff

JURISDICTION	SIZE	TYPE OFFENDER	TYPE SYSTEM		LEVELS OF OFFENSES/ NATURE OF BAC EVIDENCE	MANDATORY SANCTIONS	H/L PERFORMERS		RANGE OF TREATMENT FACILITIES USED	METHOD OF FINANCING
			PRIMARY	SECOND-ARY			DIAGNOSIS & REFERRAL	SUPER-VISION		
WASHTENAW CO.	234,000	ALL	PROB.	ECR	2/PRES.	DWAI: NO LIC. DUI: FLEXIBLE	PROB./ COUNS.	PROB.	BROAD	TAX, FEE, FINE
PHOENIX	582,000	ALL	ECR (1ST)	PROB. (MULT.)	1/PRES.	JAIL	PROB./ COUNS.	PROB./ COUNS.	BROAD	TAX, FEE
PULASKI CO.	287,000	ALL	SUSP. SENT.	DELAYED SENT.	1/PRES.	LIC.*	TREAT.	PROB./ TREAT.	MODERATE	TAX, FEE, FUND
MULTNOMAH CO.	557,000	ALL	PROB.	SUSP. SENT.	1/PER SE+	LIC.* (MULT.)	PROB./ TREAT.	PROB.	MODERATE	TAX, FEE, FUND
STATE OF MAINE	---	ALL	ADMIN.	--	1/PRES.◇	LIC.	TREAT.	TREAT.	MODERATE	TAX, FEE
COLUMBUS, OH	540,000	ALL	PROB.	SUSP. SENT.	1/PRES.	LIC.* JAIL	TREAT./ JUDGE/ PROB.	TREAT./ JUDGE/ PROB.	BROAD	TAX, FINE
PARK FOREST, IL	45,000	ALL	ECR	--	1/PRES.	LIC.*	TREAT.	TREAT.	BROAD	FEE, FINE
STATE OF WASHINGTON	---	ALL	ADMIN. (MULT.)	PROB./ SUSP. SENT. (ALL)	1/PRES.	LIC.*	TREAT.	TREAT./ DMV/ PROB.	MODERATE	TAX, FEE, FUND
LAFAYETTE, LA	69,000	ALL	SUSP. SENT. (1ST)	PROB. (2nd)	1/PRES.	LIC.* JAIL* (MULT.)	COUNS.	COUNS./ PROB.	MODERATE	TAX, FEE, FUND
GREENVILLE, SC	61,400	ALL	ADMIN. (1ST)	PROB. (MULT.)	1/PRES.	LIC.	COUNS./ JUDGE	COUNS./ JUDGE	MODERATE	TAX, FEE, FUND

*Conditional
+No Plea Bargaining
◇Preliminary Breath Test

ABBREVIATIONS/DEFINITIONS USED IN TABLE 3-1

PROB: Probation
ECR: Earned Charge Reduction
SUSP. SENT.: Suspended Sentence
ADMIN.: Administrative
DELAYED SENT.: Delayed Sentence
1ST: First Offense
2ND: Second Offense
MULT: Multiple Offense
PRES.: Presumptive
DWAI: Driving While Ability Impaired
DUI: Driving Under the Influence
LIC.: License Suspension or Revocation
COUNS.: Counselor
TREAT.: Treatment
DMV: Department of Motor Vehicles
FUND: Soecially Designated Account With Funds From Liquor Tax, etc.
TAX: Funds From General Tax Base, No Special Account For Drunk Drivers
FINE: Funds From Court Fines
FEE: Funds From A Fee Assessed From Participants In Program

participate in a treatment program in exchange for a reduction or dismissal of the original drunk driving charge. Most variants of this type of process require evidence of satisfactory participation in the agreed program before the charge is reduced or dismissed and have become known as **earned charge-reduction** processes. Systems that involve so-called **pretrial diversion** and **plea bargaining** with the prosecutor and the judge are included in this general category. Also included are systems that use a **withheld verdict** about final guilt or innocence pending participation in a treatment program.

Clearly, then, all reduced-charge processes are distinguished from other kinds of processes by a single feature, namely, that the inducement for participation in a treatment program is offered before the determination of the final charge. On the other hand, in **reduced-punishment** processes the inducement is offered after the determination of the final charge. In exchange for a reduction in the amount of fine, the length of incarceration, or the period of driver license suspension, the convicted drunk driver agrees to participate in a treatment progam.

There are three major kinds of reduced-punishment processes. The first and most common is the **probation** approach wherein the defendant is placed on probation while participating in treatment. In another variant, called here the **reduced-sentence** approach, the defendant enters and completes a treatment program during the period between conviction and final sentencing. Satisfactory completion of the treatment results in a less-severe punishment. The third variant of the reduced-punishment process is the **administrative** approach in which an administrative agency rather than a judicial agency performs some key functions of the system. In this case, the period of suspension of the driver's license may be reduced; driver license sanctions are the only punishment for drunk driving that can be controlled by an administrative agency.

REDUCED-CHARGE PROCESSES

As noted above, this type of case disposition involves an exchange of promises between the defendant (and his attorney) and the prosecutor or judge (see Figure 3-1). The defendant agrees to participate in a court-approved education or treatment program, and in return, the court (through either the judge or the prosecutor) agrees to reduce the drunk driving charge to a less serious charge (for example, reckless driving) or even to dismiss the drunk driving charge altogether. Usually, the defendant must complete the agreed program before the charge is finally reduced or dismissed. Note that it is immaterial whether the judge might have reduced the sentence anyway. It is only important that the defendent **believe** that the reduction is being offered as a part of the bargain.

Reduced-charge processes are fairly common among jurisdictions that refer arrested drunk drivers to treatment programs. Analysis of current practices of health/legal systems indicates that about twenty percent of such jurisdictions have adopted the reduced charge approach as their primary case-disposition process (see Appendix A).

Reduced-charge processes tend to split into two major types, depending on the point in the legal proceedings at which the health functions of diagnosis, referral, and treatment supervision occur. These are:

- Reduced charge "A"--Charge reduced or dismissed before conviction.
- Reduced charge "B"--Charge reduced or dismissed after conviction.

Reduced Charge "A"--Charge Reduced or Dismissed Before Conviction

In this type, the defendant's drinking-driving problem is diagnosed and referral to an appropriate type of treatment is recommended at or before a pretrial hearing (see Figure 3-2). The prosecutor then offers to reduce or dismiss the drunk-driving charge in exchange for the defendant's participation in the recommended

Figure 3-1
Top-Level Model of Reduced Charge
Case-Disposition Process

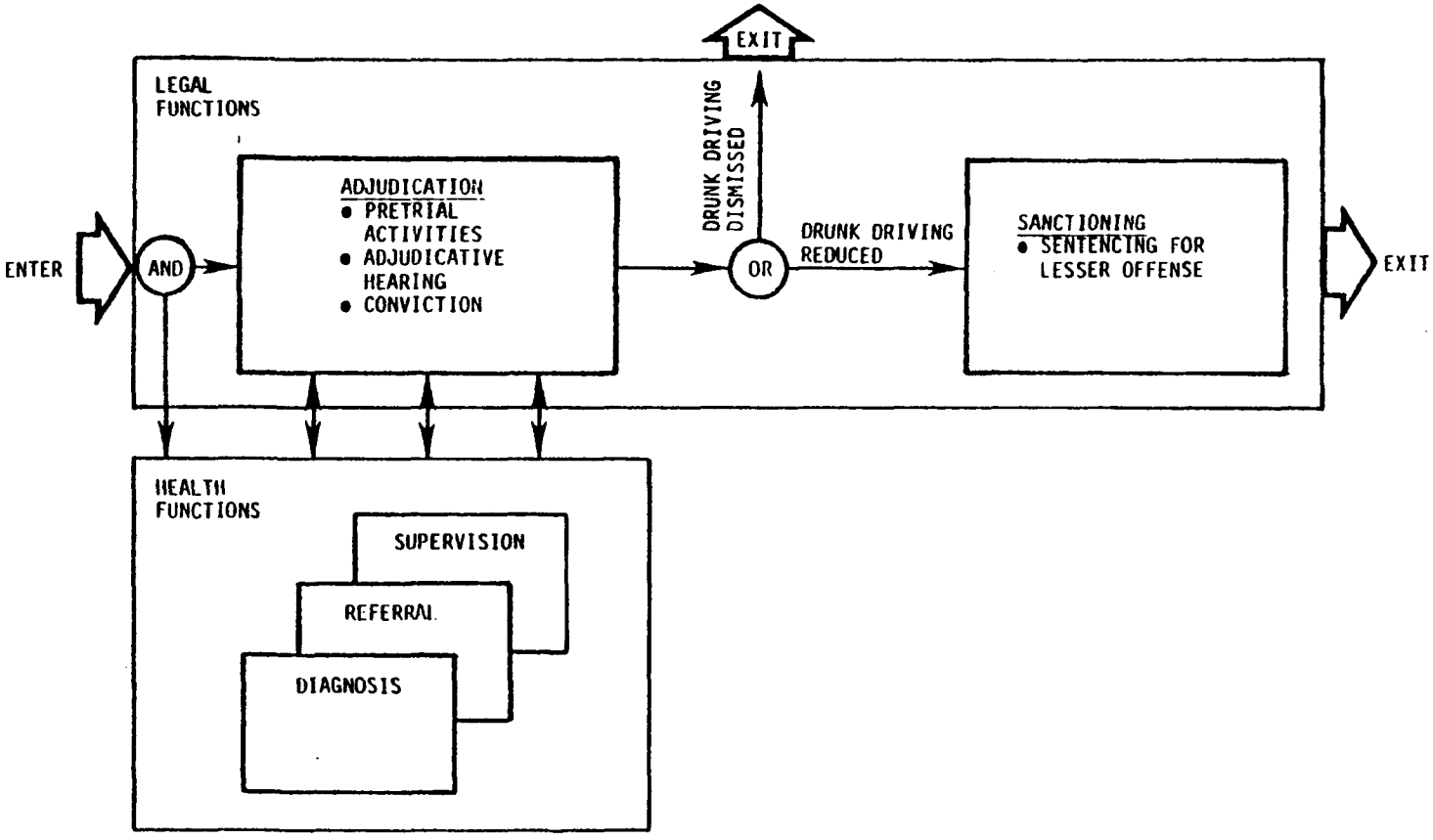
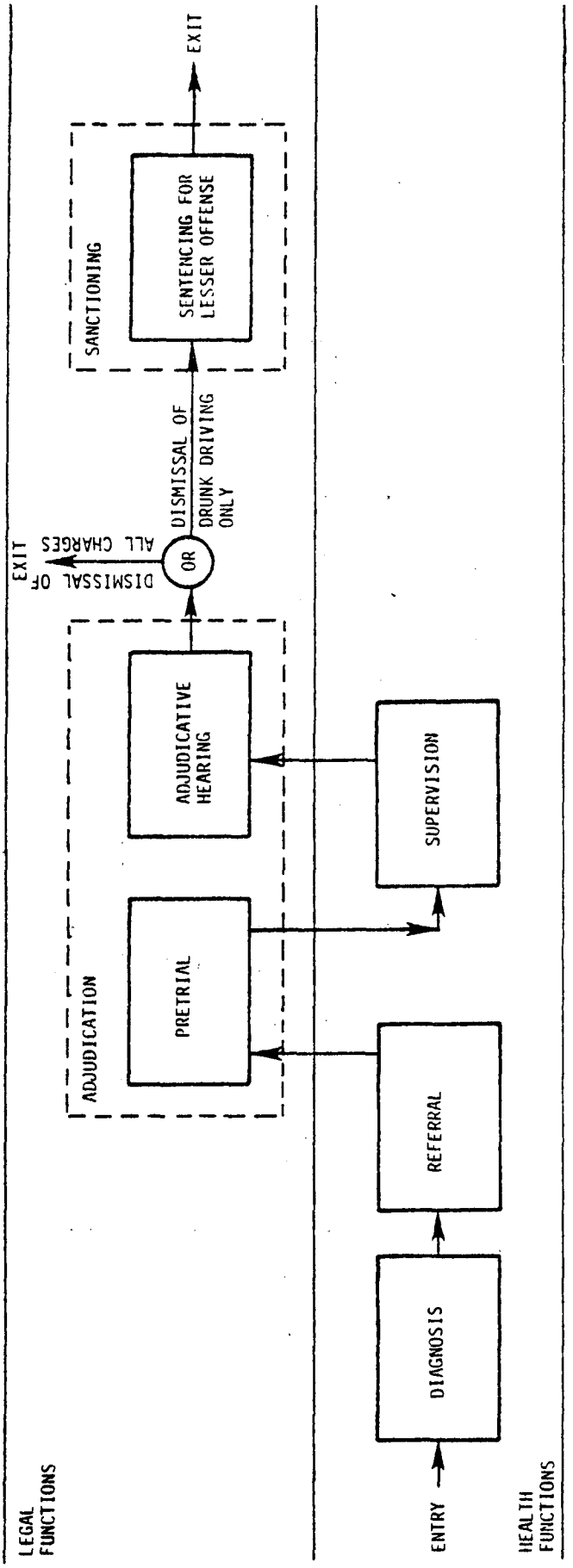


Figure 3-2
Reduced Charge "A" Case-Disposition Process



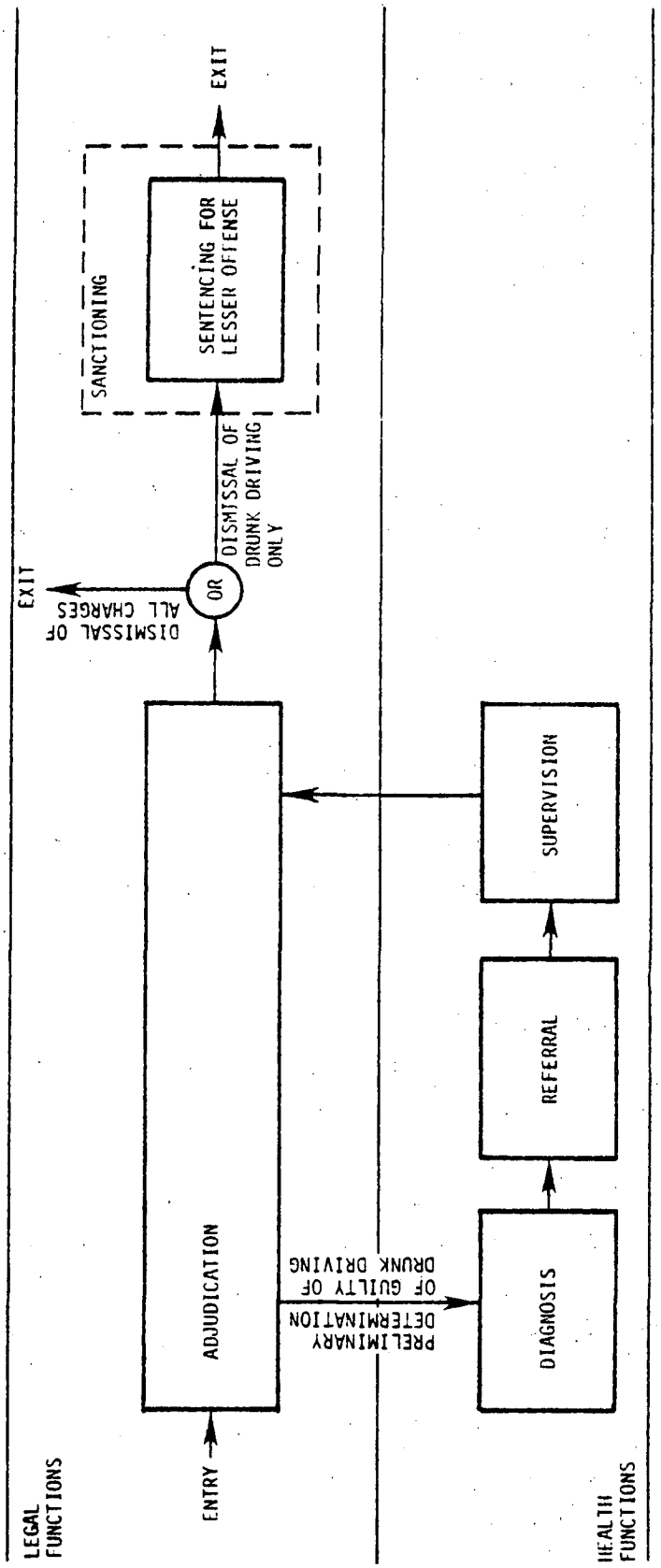
treatment program. If the defendant and the court accept this offer, the defendant completes the treatment program before returning to court for his scheduled trial. If the defendant has satisfactorily completed the treatment program, the drunk-driving charge is dismissed. The agreement may require the defendant to plead guilty to a lesser offense, but sometimes no other charge is involved. The defendant's failure to complete the treatment program by the trial date can result in a trial on the original drunk-driving charge, but the court usually can exercise its discretion to delay the trial further to give the defendant another chance to complete the program.

The best documented and most publicized example of this type of reduced-charge process is the Prosecution Alternative to Court Trial (PACT) program used by the City Court of Phoenix, Arizona (Examples used in this section are from our on-site case studies. Summary descriptions of the systems studied are presented in Appendix A.). PACT is offered only to persons who have not participated previously in the program. The Village of Park Forest, Illinois, also reduces the drunk-driving charge before conviction as an inducement for participation in a program of education and treatment. Nearly all individuals arrested for drunk driving in Park Forest participate in the program.

Reduced Charge "B"--Charge Reduced or Dismissed After Conviction

Here the defendant pleads guilty to or is convicted of drunk driving before being offered treatment (see Figure 3-3). Most typically, the defendant agrees to plead guilty to the drunk driving charge in return for a promise by the prosecutor or judge to delay sentence (and final conviction) for a specified length of time (usually six months to a year) while the defendant participates in a recommended education or treatment program. Diagnosis, referral, and completion of treatment occur after the guilty plea but before final sentencing. The defendant may withdraw his original plea of guilty after completing the recommended program, but in some jurisdictions he must plead guilty to a less-serious offense. If the defendant has

Figure 3-3
Reduced Charge "B" Case-Disposition Process



not completed the required treatment or education by his final sentencing date, the original plea of guilty to the drunk driving offense is accepted by the court and a final conviction of drunk driving is recorded. The final sentencing date is usually extended if the defendant needs additional time to complete the treatment program. An example of this sort of process is the Plea Under Advisement Program used by the 15th District Court in Ann Arbor, Michigan.

A similar process is sometimes used by judges after conviction for drunk driving. The judge postpones the sentencing or final conviction date until the defendant has been diagnosed, referred, and treated. The judge then dismisses the drunk-driving charge and allows him to plead guilty to a less-serious offense. This procedure appears to be less common than pleading guilty to drunk driving.

Distinguishing Features of Reduced-Charge Processes

In reduced-charge processes any agreement between the defendant and the prosecutor or judge is left open-ended with respect to the treatment that will be required for a reduction or a dismissal (see Figure 3-4). This allows the person performing the diagnostic and referral functions a wide latitude in developing a treatment program to suit a particular defendant's needs. Otherwise the court might direct the defendant only to alcohol education before diagnosis could reveal that the defendant needs treatment for alcoholism.

Processes that result in the reduction of the charge to a less-serious offense often use reckless driving as the reduced offense. Other jurisdictions, however, may use a variety of other offenses as the reduced charge, ranging from a lesser degree of drunk driving (sometimes called impaired driving) all the way to a simple moving violation such as speeding or driving left-of-center.

Because he has the power to enter into plea agreements, the prosecutor manages most charge-reduction programs. Although others carry out the health functions, the prosecutor usually determines who is eligible for what charge reduction or dismissal. In many such

Figure 3-4
Summary of Distinguishing Features
of Reduced-Charge Processes

- Usually an open-ended agreement with respect to required treatment.
- Often use reckless driving as the reduced charge.
- Usually "managed" by the prosecutor.
- Health function performers:
  - Peformers vary, usually not the prosecutor
  - Referral and supervision often have same performer(s)
  - In "B" processes, health functions often performed by a non-court agency
- Plea bargaining must be permitted.
- System backlogs and mandatory sanctions often exist.
- Statutes sometimes define more than one level of drunk-driving offense.
- Court and enforcement personnel accept the concept of plea bargaining.

systems, primarily when plea agreements must be approved by the judge, it is often formality for the judge to approve the use of the charge-reduction process by the prosecutor. In a few jurisdictions, the charge-reduction process is instituted by the judge without the prosecutor's participation. This typically occurs after conviction when a judge decides to delay sentencing while the defendant participates in treatment. Any reduction or dismissal of the charge in these instances is usually up to the judge.

Reduced charges are also somewhat unique with respect to:

- the performers of the health functions, and
- the use of plea bargaining.

These two features are discussed separately below.

Performers of the Health Functions. The health functions of diagnosis, referral, and supervision may be performed by persons from a variety of agencies in reduced-charge "A" processes. In a few instances, the prosecutor, by selecting eligible participants, is the one who diagnoses defendants' drinking-driving problems and makes referrals to treatment. However, someone other than the prosecutor usually performs the health functions. Sometimes the defendant is diagnosed and referred for treatment by an agency of the court after entering the program (for example, in Phoenix). In other jurisdictions, such as Park Forest, the defendant is diagnosed and referred to treatment by an independent agency.

In all reduced-charge "A" jurisdictions, the person or agency that refers the defendant to treatment also supervises it. When the defendant returns to court, the treatment supervisor informs the court of the defendant's compliance or noncompliance with the treatment requirements.

The person(s) or agency(ies) performing the health functions also vary in reduced-charge "B" processes. In some jurisdictions, the prosecutor may diagnose the defendant's drinking-driving problem in the course of determining who is eligible for a charge reduction. In these instances, the prosecutor usually makes the referral to the

appropriate source of treatment.

In many jurisdictions, the reduced-charge "B" process is only **administered** by the prosecutor or the judge, and the health functions are actually **performed** by another agency. In some instances, after the plea agreement has been made, the defendant is referred to the probation department for a diagnostic interview. An alcohol counselor within the probation department makes the referral to alcohol education or treatment based upon the diagnostic interview. When the probation department lacks qualified personnel to diagnose and refer the defendant, these activities may be delegated to a local alcohol-treatment agency.

In all reduced-charge "B" processes we have studied, the person or agency that referred the defendant to treatment supervises the defendant's treatment program between the time of plea or conviction and the final sentencing. This is true whether the diagnosis or referral to treatment is performed by the prosecutor, judge, probation department, or treatment agency. The person supervising treatment reports to the court on the defendant's compliance with the required treatment program. The judge or a prosecutor may require a defendant to return to court for a review several times before the final sentence to assure compliance.

Plea Bargaining. For charge reduction to be used within any jurisdiction, the court must be free to engage in plea bargaining. Thus, in a state such as Oregon, where plea bargains for drunk driving are prohibited, a reduced-charge process would not be possible. Besides having the authority to plea bargain, the court must favor the procedure. Many jurisdictions, though possessing the authority to plea bargain, do not use the procedure in most instances because of a belief that it dilutes the court's authority. Prosecutors in Lafayette, Louisiana, and Greenville, South Carolina, both indicate that the only circumstances under which they will reduce or dismiss a drunk-driving charge is in the rare instance where they believe they do not have a strong enough case to win at

trial.

Those jurisdictions that do actively engage in plea bargains for drunk-driving cases tend to display one or more of the following conditions:

- system backlogs,
- mandatory sanctions,
- multiple levels of drunk driving offenses,
- court acceptance of plea bargaining, or
- police acceptance of plea bargaining.

System Backlogs. In a significant number of jurisdictions the right to a trial, particularly a jury trial, for drunk driving has prolonged the processing of drunk-driving cases. The number of drunk-driving arrests have tended to stay the same or even increase, especially in those jurisdictions using drunk-driving selective-enforcement police patrols. Thus, there is a large backlog of cases waiting for trial. In some jurisdictions, the backlogs have become so severe (six months or more) that it is a common defense tactic to demand a trial for a drunk driver in order to delay punishment. A common approach to reducing the backlog of drunk-driving cases has been charge reduction. By inducing the defendant to undergo alcohol treatment through the court's promise to reduce or dismiss the drunk driving charge, the court satisfies two goals. It enrolls the drunk driver into an appropriate treatment program, which would have been done if the defendant had been convicted of the drunk driving, and it obviates the need for a trial, since the defendant is willing to plead guilty to a reduced charge. The PACT program in Phoenix was largely a response to drunk-driving trial backlogs.

The experience of Portland, Oregon, in reducing its backlog is interesting. The District Court in Portland had a backlog of over 1,000 drunk driving cases, due largely to a drunk-driving selective-enforcement program financed by the federal Alcohol Safety Action Projects (ASAP) from 1971 to 1974. It was standard procedure for a defendant to request a jury trial, knowing that it would be a

minimum of six months before the case came to trial. Partly because plea bargaining is not allowed in Oregon, Portland's response to its trial backlog was to try to eliminate the need to provide a jury trial for most drunk drivers. In 1976, first-offense drunk driving was reduced from a traffic crime to a traffic infraction, the belief being that a traffic infraction does not require a jury trial. As it happened, however, the denial of a jury trial for first-offense drunk driving was appealed to the Oregon Supreme Court, which held that a jury trial must be available for a first-offense drunk driver. Most first-offense drunk driving cases that occurred during the time of appeal to the state court were held pending the outcome of the appeal. It is ironic that a procedure designed to reduce a system backlog actually resulted in increasing it.

The Oregon experience should not be interpreted to mean that decriminalization of drunk driving **in any form** is unconstitutional. The Oregon court ruled only on a particular version of decriminalization that still retained a maximum fine of $1000, the ability to arrest and hold for bail prior to trial, and other sanctions that are traditionally associated with a criminal offense. Only the jail sanction was removed from the decriminalized violation in the Oregon legislation. Thus, revision of the decriminalization law could make it acceptable even in Oregon, and efforts are currently underway to prepare such a revision.

Mandatory Sanctions. Sanctions are often mandatory in jurisdictions that use charge reduction. Any punitive sanction (including fine, jail, and suspension or revocation of the driver's license) can be made mandatory. The loss of the driver license is the most common mandatory sanction. Less frequently a period of jail time is a mandatory sanction.

Judges and prosecutors are sometimes unwilling to be compelled to impose such sanctions on a drunk-driving offender, particularly if no prior record of drunk-driving convictions exists. Court personnel generally feel that anyone who drinks could incur a drunk-driving charge. As a result, many prosecutors and judges, in order to avoid

the necessity of having the Department of Motor Vehicles or the court impose a mandatory license loss, will engage in plea bargains to reduce the drunk-driving charge to a charge that does not require the mandatory sanctions. However, a large number of judges feel strongly enough about a drunk driver's receiving alcohol education or treatment that the treatment requirement will be made a part of the plea bargain. As a result, charge-reduction health/legal processes exist in a large number of jurisdictions where sanctions are mandatory for a conviction of drunk driving.

All of the court systems we studied that employed charge reduction did so, at least partly, to avoid imposing mandatory sanctions. Under the PACT program in Phoenix, drivers convicted of first-offense drunk driving avoided the mandatory one day in jail. Similarly, many prosecutors in Columbus, Ohio, engage in plea bargaining for first-offense drunk driving because of a three-day jail requirement. Most judges in Columbus require alcohol treatment or education, even if the drunk-driving charge is reduced. Park Forest and Ann Arbor both have formal charge-reduction programs, due in large part to the desire to avoid mandatory license suspensions.

Multiple Levels of Drunk-Driving Offenses. Often, jurisdictions that have the power to use plea bargaining in a charge-reduction scheme do not use it. Many prosecutors and judges believe that a person charged with an alcohol-related offense such as drunk driving should not be allowed to plead guilty to a non-alcohol-related offense. Jurisdictions with two or more levels of alcohol-related driving offenses can answer such objections. Typically, a jurisdiction with two levels of alcohol-driving offenses have a driving-while-intoxicated offense, which is the standard drunk-driving offense. In addition, the jurisdiction will have a lesser offense, often termed "impaired driving," which usually has a significantly decreased penalty. If the prosecutor or judge wants to induce a defendant charged with driving while intoxicated to seek alcohol treatment, he can offer to reduce the drunk driving to impaired driving. As a result the record of an alcohol-related

driving offense will not be lost. For example, Michigan has two levels of alcohol-driving offenses, and the two levels are an integral part of charge-reduction programs throughout the state.

Court Acceptance of Plea Bargains. Many prosecutors and judges are reluctant to use plea bargaining for some very practical reasons. First, courts are concerned that if a drunk-driving charge is reduced to a non-alcohol-related offense, it is much more difficult to use that conviction as a diagnostic tool for later identification and treatment of multiple offenders. As mentioned previously, however, this argument is blunted when the charge is reduced to a lesser alcohol-related offense. Second, charge-reduction programs generally involve substantial periods of time (often, six months to a year) during which there is no adjudication of the drunk driving charge. Besides a court system's natural desire to bring a case to a close as quickly as possible, a long period between arrest and final adjudication creates problems for the Department of Motor Vehicles (DMV) keeping traffic records. A defendant's traffic record for court and DMV purposes may not be completely accurate because a drunk-driving case is in an extended process of adjudication.

Those jurisdictions that use charge reduction are more concerned with "successful disposition" of a drunk-driving charge, rather than simply recording a conviction. These jurisdictions feel that is is not so important that the court convict a defendant of drunk driving as it is to use every device within the court's power, including plea bargains, to attempt to ensure that future drunk driving will not occur. Not all courts that use charge-reduction systems are in agreement, however, as to which drunk drivers should receive charge reductions. Park Forest allows any drunk-driving defendant to participate in its charge-reduction program, regardless of previous offenses. Because the defendant must satisfactorily complete treatment to get the charge reduction, the Park Forest prosecutor is willing to let anybody take advantage of the program. The PACT program in Phoenix only allows drunk-driving defendants who have not previously been through PACT to participate, maintaining that "one

bite of the apple" is enough. Ann Arbor designed its charge-reduction program as an inducement to defendants who are hard to motivate. The prosecutor could grant the program to those drunk drivers for whom he felt a negotiated reduction to impaired driving would act as an inducement to complete an alcohol treatment program.

Police Acceptance of Plea Bargains. An important factor in establishing a charge-reduction process is the support of police. Since the police make the arrests for drunk driving, they are the essential **case-finding** link in the health/legal process. If the police believe that all of their "good" drunk-driving arrests are being reduced to lesser offenses, they may have the tendency not to arrest for drunk driving, because they believe the charge will be reduced anyway. Park Forest provides a good example. When the charge-reduction program began in 1973, many police were firmly opposed to it for the reason stated above. However, after realizing that the program was applied uniformly so that everybody was able to participate, not just those with "connections," and that everybody was required to get involved in a satisfactory alcohol treatment program in order to get the charge reduction, most police officers became firm supporters of the process. In fact, their awareness of the drinking and driving problem was increased, and their arrests for drunk driving tripled in the first year of the program's existence and have stayed at or above that level since then.

COURT PROBATION

Court probation is a widely used health/legal process. We estimate that nearly one-half of treatment-oriented health/legal systems use this approach (see Appendix A). Many of the thirty-five federally funded Alcohol Safety Action Programs used the probation process for case disposition, and most jurisdictions that have probation supervision for misdemeanor offenses use the process.

The typical court probation process for a drunk driver allows the defendant a choice of traditional court sanctions of a fine and/or jail or a period of probation, usually six months to two years as the

reduced punishment (see Figure 3-5). As a condition of the probation, the defendant must participate in a recommended alcohol treatment or education program. The judge usually imposes a fine and occasionally a portion of the statutorily prescribed jail time as additional conditions of probation. The defendant accepts probation with the knowledge that if he fails to comply with any of the probation conditions, the full traditional sanctions may be imposed.

Court probation processes fall under four headings. The differences among the types arise from the different points in the legal proceedings, after conviction, that the health functions of diagnosis, referral, and supervision take place.

Probation "A"--Diagnosis and Referral After Conviction But Before Sentence

In this type of probation process, diagnosis and referral occur between conviction and sentencing (Figure 3-6). At the time of conviction, the judge sets the defendant's sentencing for a specified date, usually a month to two months in the future. During this time, a presentence investigation (PSI) is performed. It is not unusual for the judge to allow the probation officer less than two weeks to complete the PSI. The presentence investigation consists of one or more interviews and may include a basic alcohol education program similar to the one used by the city court in Lafayette, Louisiana. After the interviews are completed, a referral to an alcohol treatment or educational program is made. The defendant must enroll in the recommended treatment program before returning to court for sentencing. At the time of the referral the agency performing the PSI prepares a presentence report describing the results of the investigation, and outlining the recommended treatment. While the judge need not impose any specific treatment for the defendant recommended in the presentence report, such conditions almost always are imposed.

After accepting probation, the defendant is assigned a probation officer who attempts to ensure that the conditions of probation are

Figure 3-5
Top-Level Model of Probation Case-Disposition Process

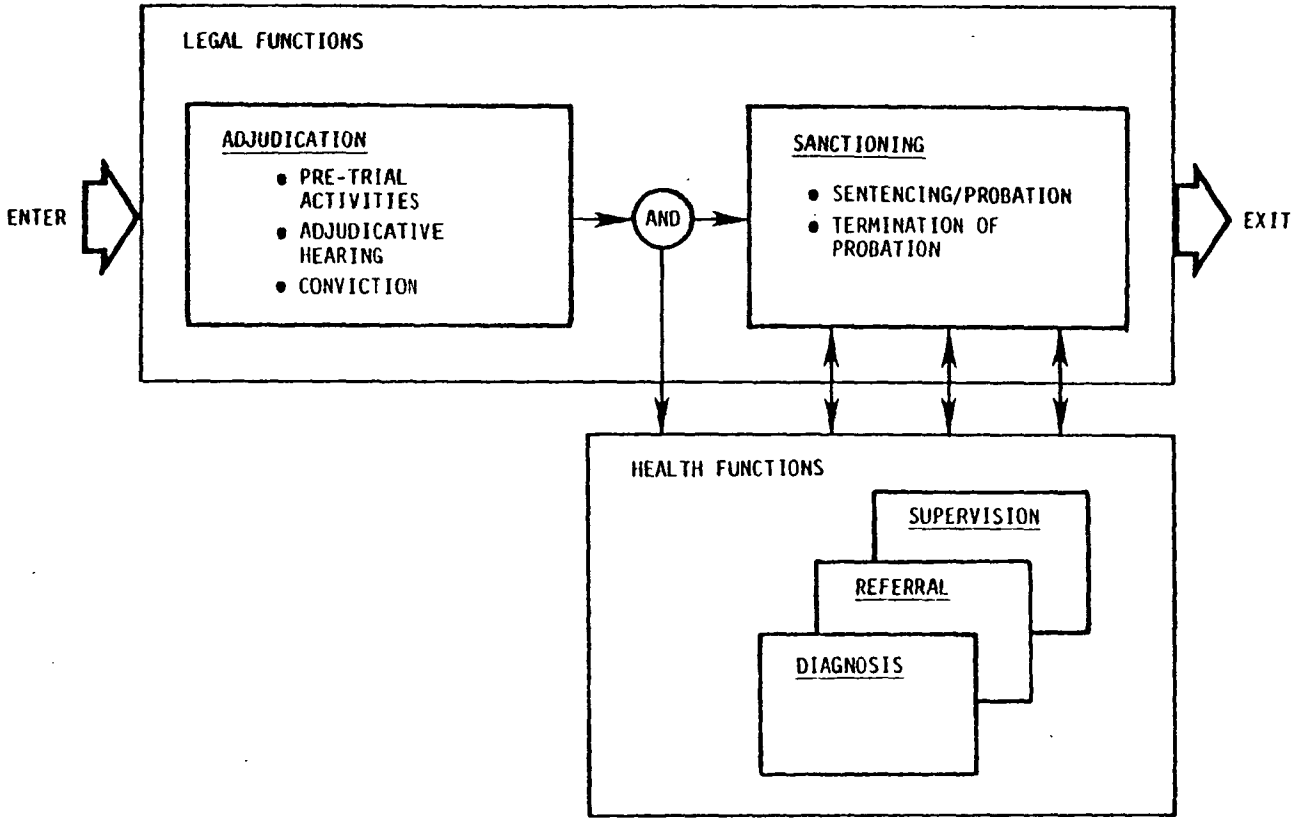
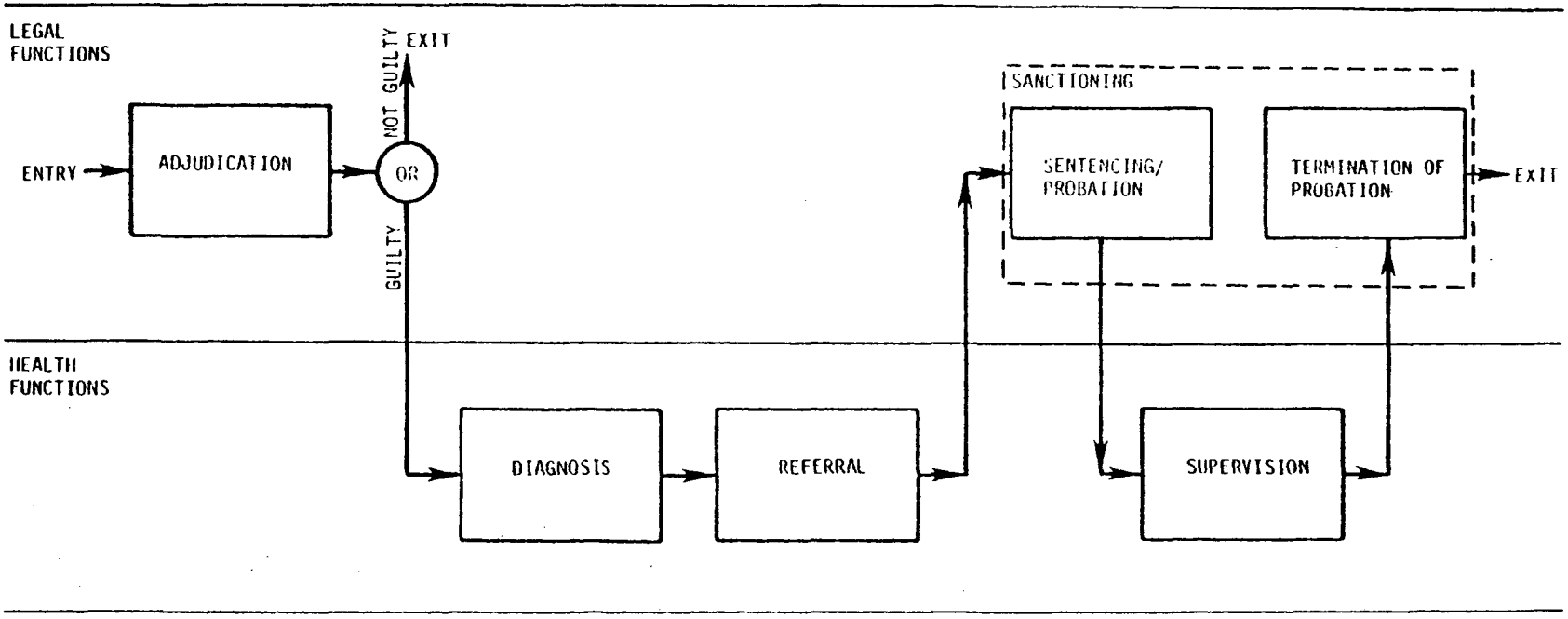


Figure 3-6
Probation "A" Case-Disposition Process



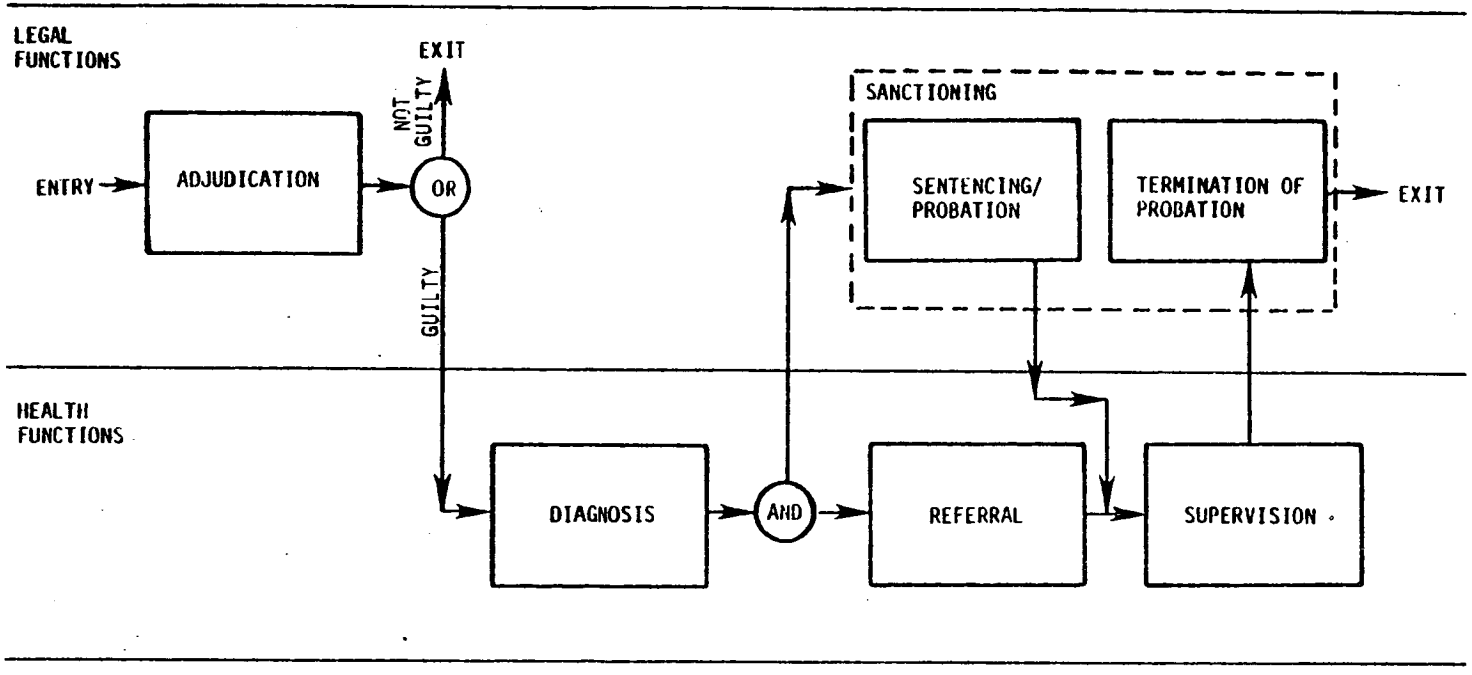
adhered to. If any of the probation conditions are violated, the judge may institute violation of probation proceedings against the defendant. After a hearing, if the defendant is found guilty, the judge may terminate the probation and impose the traditional sanctions or he may reinstate and/or extend the probation up to the maximum statutory probation limit allowed by the particular jurisdiction. In most instances, judges show a good deal of leniency in allowing probation periods to be reinstated if the defendant will resume treatment. Once the probation period is completed and the conditions have been satisfactorily met, probation is terminated, and the court completes the file on the drunk driver. At this point, the defendant is no longer subject to the traditional sanctions for which the probation was substituted.

The 15th District Court in Washtenaw County, Michigan, is an example of a probation "A" court probation process.

Probation "B"--Diagnosis After Conviction and Referral After Sentence

The probation "B" process is similar to the probation "A" process. The essential difference between the two types is the point in the proceedings at which the referral to treatment is made. In probation "B" processes, the referral is made **after** the defendant is sentenced and placed on probation (Figure 3-7). Although the treatment recommendations are made to the judge at the time of sentencing, as in the probation "A" process, the defendant is not required to become involved in treatment until after the judge embodies the treatment recommendations in a condition of probation. Often this sequence is followed in recognition of the judge's prerogative to accept or reject any treatment recommendations contained in the presentence report. By waiting until after sentencing to refer to treatment, there is no chance that the defendant will have become involved in treatment that is later rejected by the judge. The procedures of supervising the defendant's probation are similar to the probation "A" process.

Figure 3-7
Probation "B" Case-Disposition Process



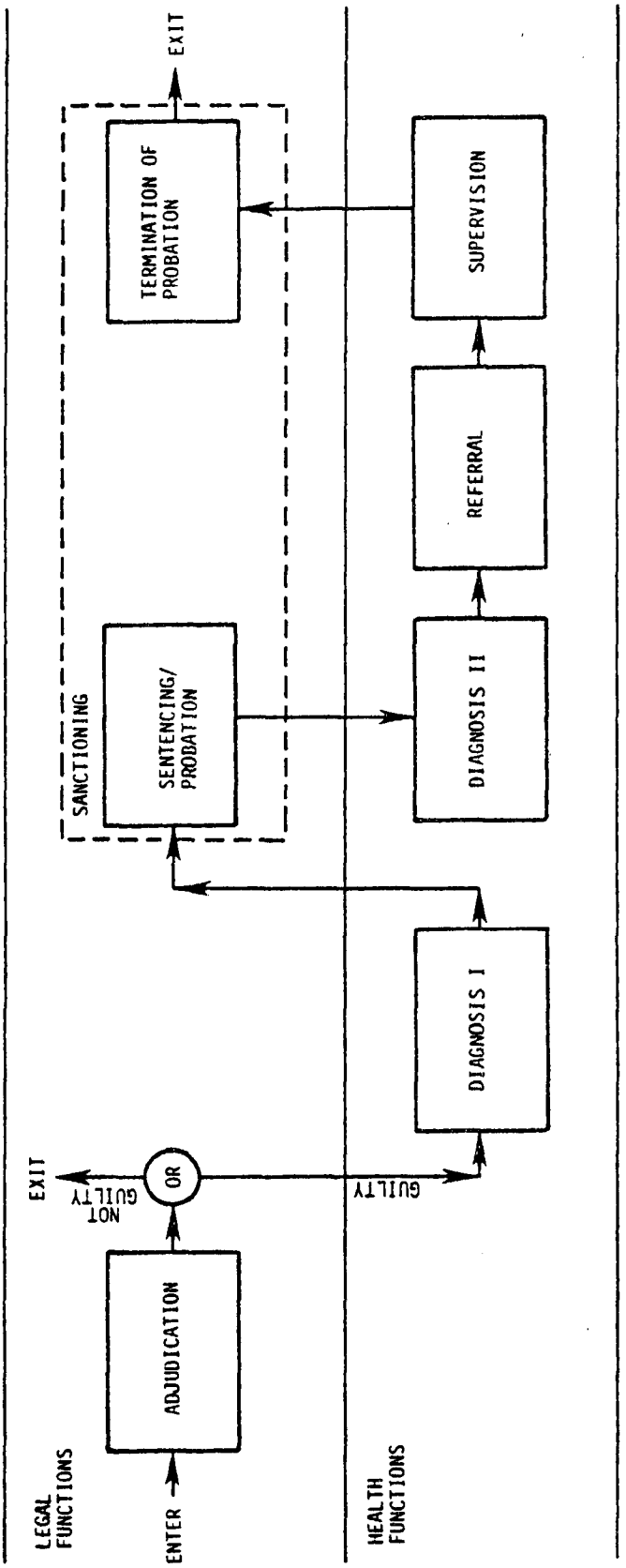
The probation "B" process appears to be the most widely used probation process. Most of the federally funded ASAPs used this process. Of the ten in-depth health/legal descriptions developed for this manual, Portland, Lafayette, and Washtenaw County used the probation "B" approach to a significant extent. Other jurisdictions in the study used it to a lesser extent (see Appendix A).

Probation "C"--Diagnosis After Conviction and Further Diagnosis and Referral After Sentence

A probation "C" process uses a presentence investigation between conviction and sentencing similar to Types A and B. During this period a **preliminary** diagnosis of the defendant's drinking patterns is made as part of the presentence report (Figure 3-8). Typically the preliminary diagnosis will only place the defendant in one of several classifications (social drinker, problem drinker), and no specific treatment recommendations will be made. When the defendant returns to court for sentencing, the judge places the defendant on probation and uses the results of the preliminary diagnosis to determine if further diagnosis is necessary. If further diagnosis is deemed necessary (usually for problem or excessive drinkers), an open-ended condition of probation requires the defendant to undergo additional diagnosis and to complete any treatments that are recommended. If the judge believes further diagnosis unnecessary (usually for social drinkers), he places the defendant on probation and simply refers the defendant to an alcohol-education program as a condition of probation. Procedures for supervising the defendant's treatment participation while on probation are similar to probation "A" and "B" processes.

Probation "C" processes do not seem to be used extensively, perhaps because of the time required to perform the different levels of diagnosis. None of the ten sites selected for in-depth study used such a diagnostic procedure and of the federally funded ASAPs, only Puerto Rico; Tampa, Florida; and Cincinnati, Ohio, used the probation "C" process.

Figure 3-8
Probation "C" Case-Disposition Process



Probation "D"--Diagnosis and Referral After Sentence

Perhaps the simplest of the probation processes, the probation "D" process, does not use a presentence period. Sentencing usually immediately follows conviction (Figure 3-9). The judge places the defendant on probation with an open-ended probation condition requiring that the defendant receive a diagnosis of his drinking patterns and participate in any alcohol treatment or education recommended as a consequence of the diagnosis. Supervision of a defendant's participation in treatment is similar to the other types of probation. Because all the health functions occur after sentencing, the defendant does not return to court unless he is cited for a violation of one of his probation conditions. The Circuit Court in Greenville, South Carolina, uses the probation "D" process for a significant portion of its drunk-driving multiple offenders.

Distinguishing Features of Probation Processes

Probation processes have distinguishing features that fall into the following five categories:

- Performers of the Health Functions
- Authority to Impose Probation
- Availability of Probation Services
- Requirements for Supervision of Treatment
- Influence of Past Procedures

Features in each of these categories are summarized in Figure 3-10 and are discussed below.

Performers of the Health Functions. The persons or agencies that perform the health functions within the probation process are similar in all types of probation. For ease of discussion, the description of the performers of the diagnostic function is separated into presentence diagnosis and postsentence diagnosis.

Presentence Diagnosis. Presentence diagnosis used in probation "A," "B," and "C" processes may be performed by one of several

Figure 3-9
Probation "D" Case-Disposition Process

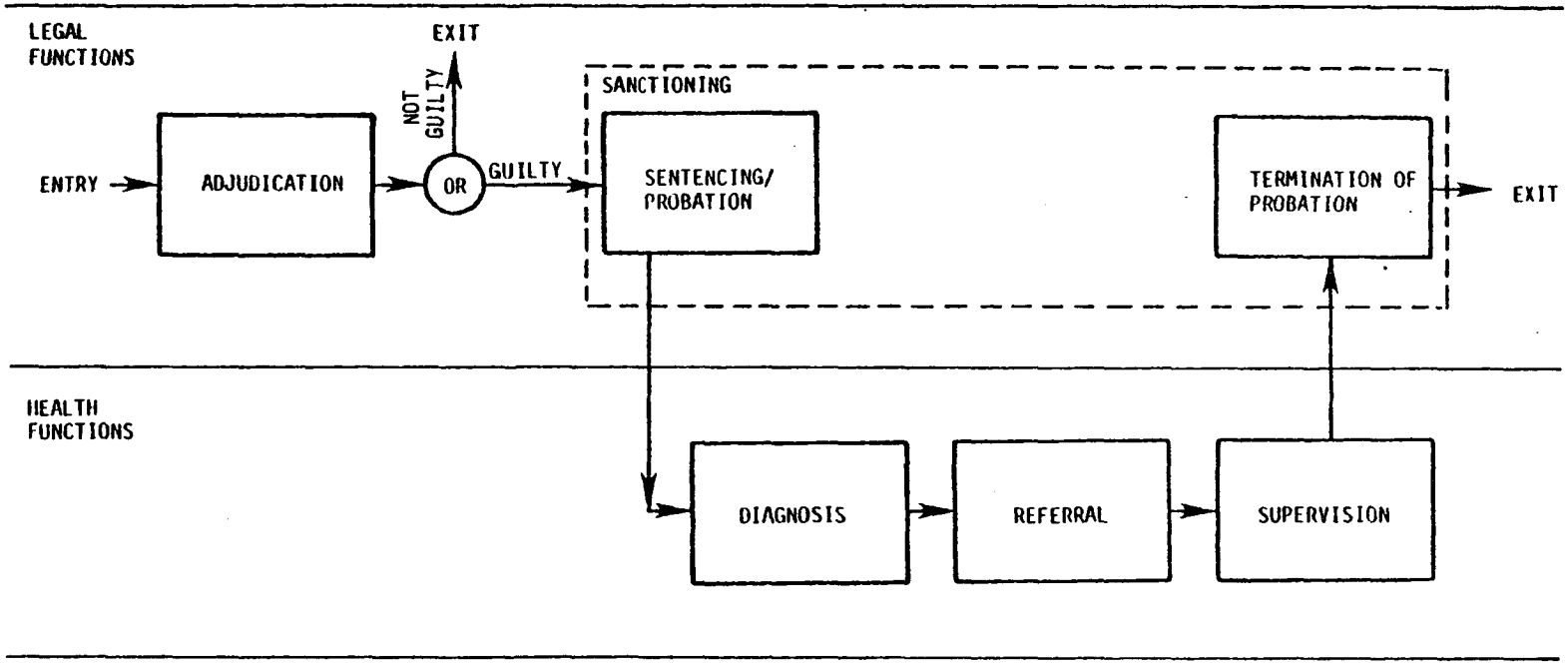


Figure 3-10
Summary of Distinguishing Features
of Probation Processes

- Diagnosis usually performed by probation officers, court counselors, or treatment agency staff.
- Referral often made by diagnosing agency.
- Supervision is a three-step process involving the judge, the probation officer, and the treatment agency.
- Process may require intensive supervision, especially when long periods of probation are specified.
- Probation department assumes main responsibility for supervision, relieving treatment agency of this responsibility.
- Both formal and informal procedures often exist for ensuring compliance with probation.
- Court must have authority to impose probation.
- Probation resources must exist (e.g., probation staff, support staff, offices, etc.).
- Process tends to occur in jurisdictions that have used probation approaches for dealing with other offenses.

agencies. The probation departments in many courts employ officers capable of performing alcohol diagnosis. In these courts, the probation officer performs the entire presentence investigation, including the recommendation of appropriate treatment. This is the procedure followed by the 15th District Court in Washtenaw County.

Other judges may have the presentence investigation of convicted drunk drivers, including the alcohol diagnosis, performed by a local treatment agency, as several judges in the 14th District Court in Washtenaw County require.

A significant number of courts employ persons whose responsibility is to perform presentence investigations of persons convicted of drunk driving. Typically called court counselors or alcohol counselors, these persons perform the same functions as probation officers during presentence investigations for the court. The Lafayette court uses court alcohol counselors to perform the complete presentence investigation.

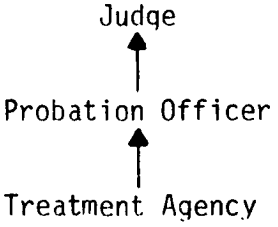
Finally, in some jurisdictions the presentence investigation is performed by a combination of two or more of the agencies mentioned above. Frequently a probation officer presents a social history of the drunk driver and a local treatment agency evaluates his pattern of alcohol use. The two reports are then combined into a presentence report, which is presented to the judge by the probation officer. Portland, Oregon, uses this method as its primary means of presentence investigation.

Postsentence Diagnosis. Postsentence diagnosis may be performed by any of the agencies mentioned under presentence diagnosis. However, the treatment agency most commonly performs the diagnosis. After the defendant is placed on probation, he is referred by either the judge or the probation officer to an alcohol treatment program. The treatment agency diagnoses his problem and provides the defendant with treatment. The probation officer remains the "middle man" between the court and the treatment program. Greenville, South Carolina, uses this method for a significant number of its drunk driving multiple offenders.

In some instances, however, the probation officer may perform the postsentence alcohol diagnosis.

Referral. After making a diagnosis, the same agency nearly always refers the driver for treatment. When a treatment agency performs the diagnosis, referrals are almost automatically made within the same agency unless the client's treatment needs cannot be met there. When the diagnosis is performed by an employee of the court, referrals tend to be made to a broader spectrum of agencies.

Supervision. Supervision in all types of formal probation processes is a three-step process. The levels of supervision of drivers on probation are indicated in the following diagram:



The treatment agency is responsible for notifying the probation officer if there is any problem with the defendant's participation in treatment; the probation officer, in turn, may notify the judge if court action is necessary to ensure participation.

The procedures used in the supervision process are also found in all probation types. The treatment agency usually attempts to contact a defendant who is not participating and resolve any problems before contacting the probation officer.

Similarly, the probation officer contacts the defendant in an attempt to gain his compliance before notifying the judge of the problem. The number of such attempts by either the treatment agency or the probation officer will generally depend on the severity of the problem and the quality of the relationship between the defendant and the treatment agency or probation officer.

If the judge is notified, a common procedure is for the judge to issue a bench warrant for violation of probation by the defendant. After the defendant is arrested on the bench warrant, a probable cause hearing is held, followed by the probation revokation hearing.

If the defendant is found guilty, the judge has the option to terminate probation and impose traditional sanctions (i.e., jail) or to reinstate the probation with or without additional conditions.

Many judges have procedures for ensuring compliance with treatments that are less severe than a hearing for probation violation. In some jurisdictions, such as the 15th District Court in Washtenaw County or the City Court in Lafayette, the judge requests the defendant to appear at a "show cause hearing." This hearing is used as a means to bring the defendant before the judge without a charge of violating probation. At the hearing the judge advises the defendant of the importance of completing the treatment. If noncompliance continues after the show cause hearing, probation violation is generally the next step.

Authority to Impose Probation. All courts have the authority to impose some sort of sanction on a person convicted of drunk driving. The sanction may be a fine, a jail term, a driver's license suspension, or any combination of these three. For a court to use probation in its sanctioning scheme, it must have the authority to do so. Jurisdictions in which drunk driving is a criminal misdemeanor typically have statutes authorizing probation. There are circumstances, however, where the use of probation for drunk driving is not authorized. In Park Forest, Illinois, for example, driving under the influence is a violation of a city ordinance that is civil in nature. There is no provision for probation in the ordinance and thus, probation is not an available sentencing procedure.

To impose probation the court also needs discretionary sentencing power. Since probation is imposed in lieu of traditional sanctions, all traditional sanctions cannot be mandatory (here, the term "mandatory" means a sentence that, by statute, cannot be reduced by a judge). Typically, in these instances, the mandatory sanctions are imposed and probation is then given instead of the remaining discretionary sanctions.

Availability of Probation Services. In addition to the authority to impose probation, the jurisdiction must possess certain resources. Even in its simplest form, without any presentence investigation, probation is relatively expensive. To supervise the defendants, probation officers, a secretarial staff, an office, and office supplies are minimal necessities.

Most communities have a probation department of some sort. Often, the probation department has only enough staff to handle felonies or serious crimes. Even if a probation department is available for misdemeanors, drunk drivers may not be placed on probation, because departments simply lack the staff to supervise all of the drunk drivers convicted by their court system. Often, only a portion of the court's drunk drivers are actually placed on probation--the rest are dealt with by health/legal processes that do not require as many court resources. The best example of this situation occurs in Greenville where only about one-fourth of all drunk driving multiple offenders are placed on formal probation. The rest receive suspended sentences with little or no supervision by the probation department.

Another tactic used by probation departments that lack the resources to supervise a large number of drunk driving clients is "summary probation." While the defendant is officially on probation, it is an unsupervised probation in which the defendant does not report to a probation officer and is only required to satisfy his sentence requirements. Action is taken only if the defendant violates the conditions of his "probation." A similar procedure is used in Portland by several district court judges. There, particularly in cases of first offenders who the judge does not want to assign to formal probation, he will place them on "bench probation." The defendants do not go through the probation department, but instead are answerable directly to the judge. Bench probation typically does not require any routine reporting, and the judge acts only if the defendant fails to perform his sentence requirements.

Finances also dictate the type of probation process that can be

used. Type D probation is the most economical because there is no time-consuming presentence investigation. Probation departments that provide their own alcohol diagnostic services must have enough money to pay for probation officers with the ability to diagnose and make referrals. The probation department of the Phoenix City Court or the 15th District Court of Washtenaw County Michigan are examples of probation departments with sufficient resources to perform their own diagnosis and referral.

Requirements for Supervision of Treatment. Although supervision is part of all types of case disposition, it tends to be more comprehensive in probation processes. A probation officer entrusted to make sure that a drunk driver is participating in treatment can provide intensive supervision, through home visits and weekly or even daily reporting procedures. It is important, however, that the probation officer's caseload be small enough to allow such supervision.

Often jurisdictions recognize the need for different degrees of supervision. A court may find it more important that a multiple offender receive closer supervision during treatment than a first offender. As a result, many jurisdictions may use probation for multiple offenders while less formal supervision procedures, such as a suspended sentence, will be used for first offenders. This practice is seen in Lafayette and, as noted above, Greenville.

For those courts that wish to track a defendant for substantial periods of time (a year or more), probation is a useful procedure. Typical probation statutes allow probation terms to last from two to five years. During this time, probation conditions can continue to be enforced by the court. This is especially useful for the drunk driver who is a chronic alcoholic and needs extended therapy. While extended treatment is possible under the other health/legal processes, it is less practical. The need for monitoring an individual for a long period of time can also create problems for reduced-charge processes because of possible denial of defendant's

right to a speedy trial. Similarly, courts are reluctant to use the delayed sentence approach because of the long period in which the case is kept open without sentence being passed. A suspended sentence process in which an agent of the court performs probation functions is more practical, and as a result it is sometimes used in place of probation when long-term supervision is needed.

The probation process is also attractive for health/legal systems that wish to maintain a separation between the treatment agency and the supervisory role. If a probation officer or other court agent is not available to supervise the defendant's participation in treatment, the treatment agency may find itself in the supervisory role of reporting noncompliance directly to the judge. Many treatment agencies, such as the Mid-South Center for Alcohol Problems in Pulaski County, Arkansas, believe that placing the treatment agency in the role of supervisor creates a feeling of fear or intimidation between the treatment agency and the defendant. The agency prefers to use an intermediary such as a probation officer to make sure the defendant seeks treatment.

Influence of Established Procedures. All health/legal processes are greatly influenced by established procedures. Probation processes are especially to be used by jurisdictions that rely on tools they have used in the past. Probation procedures have long been used for requiring felons to participate in various treatment programs. Thus, when a court wants to require a drunk driver to participate in alcohol treatment, an obvious method is the probation method that had been used on an extensive basis for more serious crimes. When the 15th District Court of Washtenaw County started requiring large numbers of drunk drivers to participate in treatment programs, a primary reason to use probation was that the process was well-understood and well-established in the community, having been used for a wide variety of criminal offenses.

REDUCED-SENTENCE PROCESSES

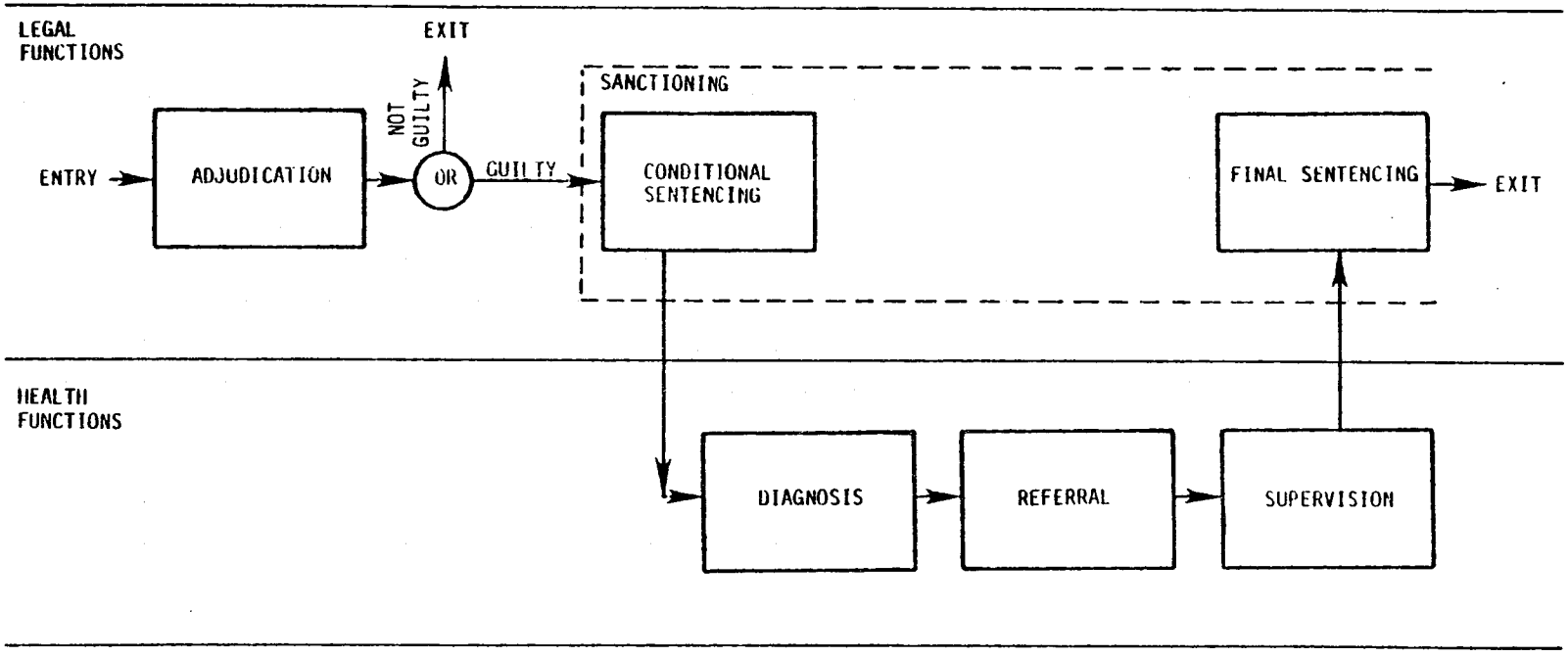
The reduced-sentence process is very similar to probation in function, but it is not as common. We estimate that about one-fourth of all health/legal systems use this approach in one form or another (see Appendix A). Often, a reduced-sentence process is used interchangeably with the probation process. However, there are significant differences that warrant discussing them separately.

Reduced-sentence process can be classified into two major types. Both types are similar to the probation processes in their sequencing of the health functions. As will be seen in the discussion that follows, the difference between the two types is the point at which the sanctions for drunk driving are imposed.

Reduced Sentence "A"--Suspended Sentence. In a suspended-sentence process, the court imposes traditional sanctions at sentencing, such as a fine and/or jail, but promises to suspend all or part of the sentence if the defendant agrees to participate in a recommended treatment program (see Figure 3-11). The defendant is usually given a time within which he must complete treatment or maintain good behavior. After completing treatment within any time requirements, the defendant is no longer liable for that part of the sentence that was suspended. If the defendant fails to complete the treatment program or adhere to time requirements satisfactorily, the original sentence is imposed. For example, a defendant is fined $100 for drunk driving, but the judge promises to suspend $50 of the fine if the defendant satisfactorily completes an alcohol treatment program and is not rearrested for drunk driving within six months. If the defendant completes the treatment program and is not rearrested in the six-month period, then his only sanction is the unsuspended portion of the fine ($50). If the defendant has not met the conditions of the suspended sentence, he must pay the full $100 fine.

This procedure differs from probation in that probation is imposed in lieu of a more severe traditional sentence, while a suspended-sentence process imposes the traditional sentence, which is

Figure 3-11
Reduced Sentence "A" Process



later reduced. In a probation process, the traditional sentence is never imposed as long as the terms of probation are met. If the terms are not met, then probation is revoked and the traditional sentence is imposed.

Usually, all of the health functions come into the picture after the sentence is suspended, primarily because many jurisdictions lack the resources to provide presentence investigations. However, some jurisdictions use a presentence investigation as a part of the suspended-sentence process, and then the procedures are the same as the ones used for probation presentences. As noted above, the City Court of Lafayette uses the presentence suspended sentence procedure for its drunk-driving first offenders.

Reduced Sentence "B"--Delayed Sentence

In a delayed-sentence process, treatment is completed between conviction and sentencing (see Figure 3-12). Typically, after plea or conviction, the defendant learns his sentence will be lenient if he satisfactorily completes a treatment program and is not rearrested for an alcohol-related offense within a specified period of time (usually six months to a year). Once the defendant has completed the treatment program and time period, he returns to court where a reduced sentence is imposed. Generally, the reduced sentence consists of a smaller fine and/or jail term than would have been imposed had the defendant not participated in treatment. If the defendant fails to complete the treatment program or gets rearrested for an alcohol-related offense during the period of delayed sentence, the judge imposes a set of more severe sanctions at the time of sentence for the original conviction.

A delayed sentence differs from the use of probation in the same way that a suspended sentence differs from probation. Probation is imposed **in lieu of** the traditional sanctions and the traditional sanctions are **not** imposed unless the probation is revoked. The delayed-sentence process results in the **imposition of the traditional sanctions**--but in a reduced form if treatment is

Figure 3-12
Reduced Sentence "B" Process

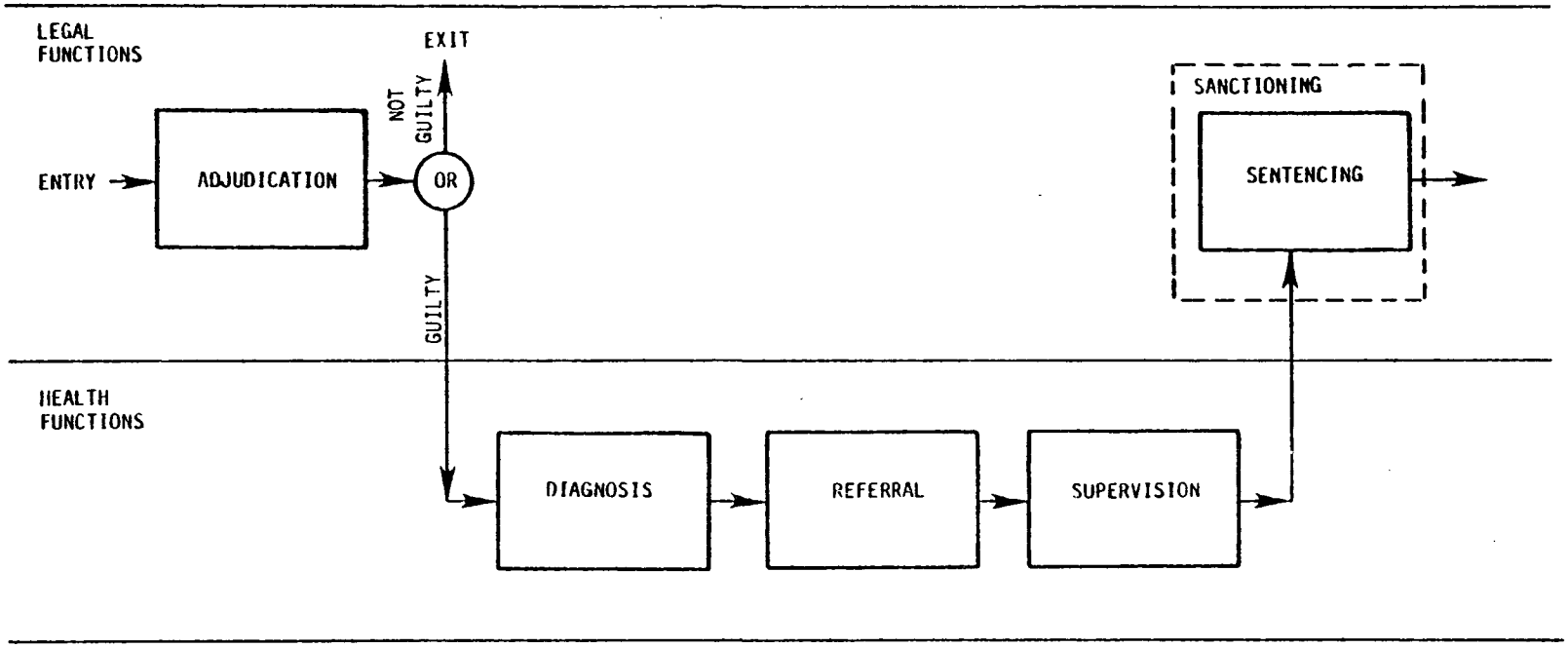


Figure 3-13
Summary of Distinguishing Features of Reduced Sentence Processes

- Similar to probation processes in style.
- Diagnosis and referral likely to be performed by a court counselor or treatment agency staff.
- Supervision often performed by treatment agency staff.
- Often used when requirement for a probation system cannot be met (e.g., authority to impose probation, adequate facilities, need for close or extended supervision).

satisfactorily completed.

As we mentioned earlier, the difference between suspended sentence and delayed sentence is the point at which the traditional sanctions are imposed. In a suspended-sentence process the traditional sanctions are imposed before treatment is performed, but they are suspended pending successful completion. In a delayed sentence process the traditional sanctions are not imposed until the court determines that treatment has been successfully completed.

Since the sentence is the final step in the delayed-sentence process, all of the health functions must, strictly speaking, be performed before the sentencing date. In a literal sense, the period between conviction and sentence when diagnosis, referral to treatment, and treatment occur is one long presentence period.

In many delayed-sentence procedures, conviction is followed by a period when a procedure similar to a presentence investigation occurs. During this time the defendant is diagnosed and/or referred to treatment and then returns to court for a review hearing. At this review hearing the judge outlines the conditions to be met and sets the final date for delayed sentencing. The review hearing is similar to a sentencing date used for probation or suspended sentence, except that sentence is not imposed but is delayed until the completion of treatment. The Municipal Court in North Little Rock, Arkansas, uses this procedure for most drunk drivers. The judge in North Little Rock refers to the review hearing, where the treatment conditions are set, as the "first date of judgment" and the sentencing date, after completion of treatment, as the "final date of judgment."

Distinguishing Features of Reduced Sentence Processes

Since probation and reduced-sentence approaches are very similar in style, the distinguishing features of reduced-sentence processes are best seen in comparison to probation processes (see Figure 3-13).

Performers of Health Functions. The performers of the health functions in reduced-sentence processes are similar to those in

probation. The primary difference is that a probation officer is not likely to be used in the reduced-sentence process; instead, a treatment agency or an alcohol counselor associated with the court carries out the diagnosis and referral. It is conceivable that a probation officer may perform the diagnosis and/or referral during a presentence investigation and that the defendant, at sentencing, receives a delayed or suspended sentence without probation supervision. If a system operates this way, the probation officer performing the diagnosis and/or referral is operating more in the role of a court alcohol counselor than as a probation officer.

The treatment agency often supervises the defendant's treatment program directly. Reports on the defendant's treatment go directly to the judge rather than to the probation officer, unlike in the probation process. Portland uses this procedure, which it calls "bench probation," for a small number of drunk drivers. In some reduced-sentence processes, however, the judge designates a court staff member to act as liaison between the treatment agency and the judge. In larger courts a court alcohol counselor fills this role, while in smaller jurisdictions it is the court clerk. The duty of the liaison is to make sure that the defendant satisfactorily completes treatment; thus, his duty is similar to that of the probation officer in the probation process.

Further Comparison of Reduced Sentence and Probation. Like probation, the reduced sentence is an established means of sanctioning defendants. It is logical, then, that when courts began to impose nontraditional sanctions such as treatment requirements, they would use one of the processes that they had used in the past for other criminal defendants. As a result, established court sanctioning procedures have played as big a role in the use of reduced sentences for drunk driving as they have in the use of probation.

Reduced sentence is in several ways a complement of probation. In these instances it is the specific **lack** of a characteristic common

to probation processes that characterizes reduced-sentence approaches. These include:

- No Authority to Impose Probation. While probation requires the authority to impose probation, reduced sentence processes are used when a court lacks the authority to impose probation.
- No Probation Facilities. While probation requires an adequate mechanism, courts that lack a probation department or whose probation department is not large enough to handle the volume generated by placing drunk drivers on probation often use a reduced sentence instead. The reduced sentence, in its simplest form, requires only a court clerk or other employee to provide cursory supervision, such as verification of attendance at a treatment agency. In some courts that use reduced sentence, supervision is provided by a special court staff member who functions very much like a probation officer. In these instances, the functional differences between a probation process and a reduced-sentence process are very small. For example, the court counselors in Lafayette, Louisiana, while technically not probation officers, perform all of the functions that a probation officer would normally provide. The result is a reduced-sentence process that is very close to being a probation process without "formal probation."
- Types of Supervision. Whereas a probation process is used when close supervision is required, reduced-sentence processes are more likely to be used when such a level of supervision is not necessary. Under a reduced sentence, a court clerk can provide less intense supervision at a reduced cost to the court. Of course, as courts hire "court alcohol counselors" to supervise reduced-sentence defendants,

this difference between the two processes becomes less distinct.

ADMINISTRATIVE PROCESSES

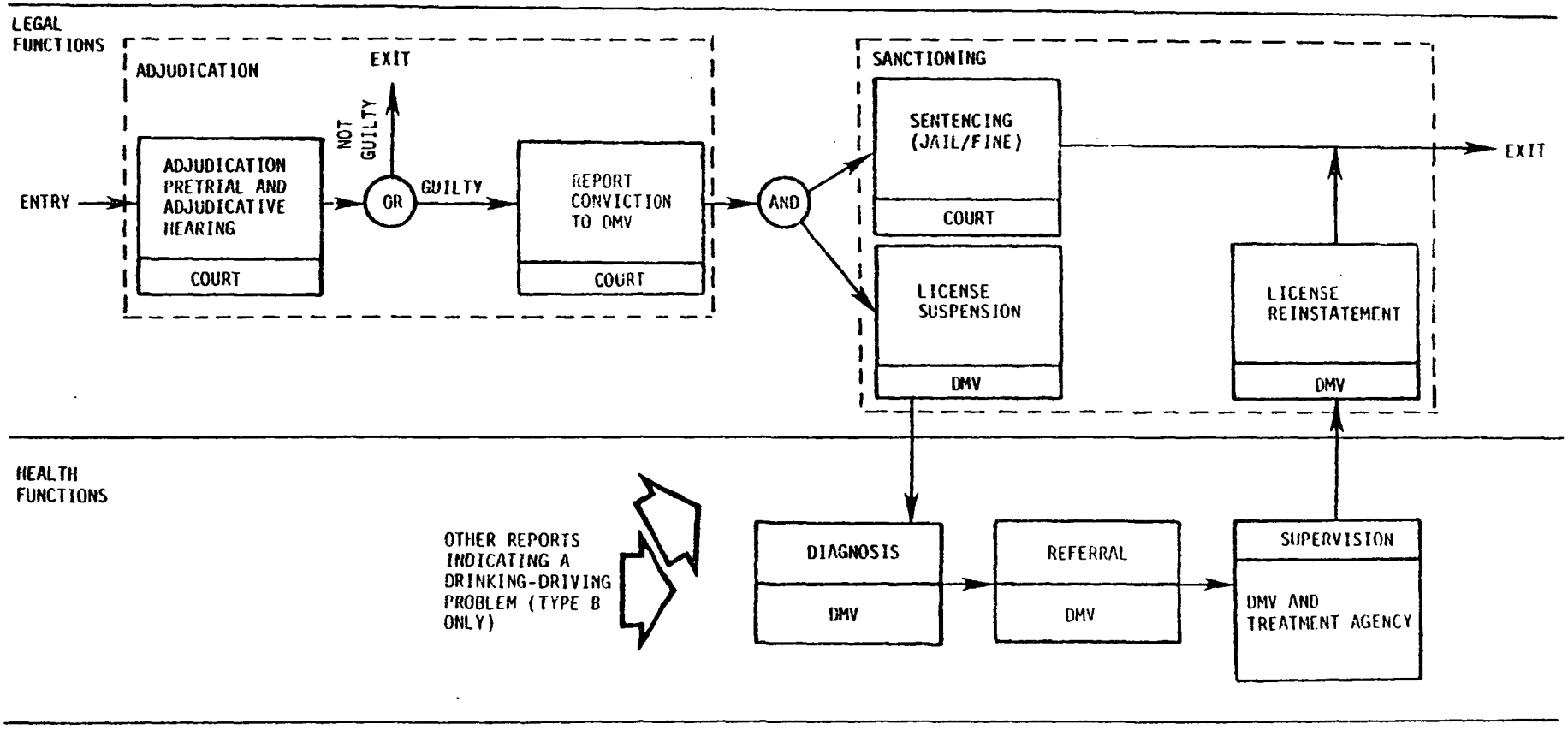
Many states throughout the country have, within the last seven or eight years, developed administrative health/legal processes. We estimate that more than ten percent of all jurisdictions that favor the health/legal approach use administrative case disposition (see Appendix A). This process is substantially different from the other three processes because the courts do not require the drunk driver to enter alcohol education or treatment. Instead, the state Department of Motor Vehicles (DMV), using its licensing power, becomes the agency that requires drunk drivers to seek treatment.

There are two primary types of administrative process (see Figure 3-14). While the procedures for getting a drunk driver into treatment may be the same under either type, the difference lies in the reason that the DMV is taking action. For the first type of administrative procedure, the DMV has received notice that a driver has been convicted of drunk driving. In the second type, it acts after it records a pattern of driving incidents involving use of alcohol, including but not limited to drunk driving convictions. These two types of administrative processes are discussed below.

Administrative "A"--Administrative Action Based on a Conviction for Drunk Driving

In this process, after the court has convicted an individual for drunk driving, the DMV enters into the health/legal process. Typically, the defendant leaves the court system directly after conviction and becomes responsible to the state licensing agency or DMV for treatment. The court may continue to impose its traditional sanctions such as fine and/or jail, but the court does not generally assume responsibility for getting the drunk driver into treatment. The process used in the state of Maine is a good example of this procedure.

Figure 3-14
Administrative Case-Disposition Process



In a few administrative "A" processes the drunk driver may stay in the court system beyond conviction. During this time he is diagnosed after study of his drinking patterns and then sentenced to enter treatment through the DMV. The DMV then refers the defendant to the appropriate treatment facility and supervises his participation. Nassau County, New York, used this approach during the period of its federally funded ASAP.

For purposes of discussion, the "pure" administrative "A" process will be described. The defendant leaves the court system immediately following conviction and becomes responsible to the DMV for treatment. A statute in the state motor vehicle code authorizes restoration of a full or restricted license before the end of the mandatory suspension period if the driver participates in an alcohol treatment or education program. In some instances, the statute may require completion of the treatment program before the license is returned, while in others, the statute may require only satisfactory participation. Several states, such as Maine, now require completion of an education or treatment program before the license will ever be returned. In some jurisdictions, participation may be required of some drivers and completion required of others, depending on the number of previous drunk-driving offenses.

Notification of the treatment requirement in order to regain the driver's license occurs after conviction and may vary from process to process. In many courts in Maine the court clerk gives the defendant a pamphlet that explains the procedures and the agency to contact for treatment. In addition, the DMV, upon receiving notice of conviction from the court, sends the same phamplet along with the notice of license suspension or revocation.

When the driver contacts the agency, it enrolls him in an alcohol education/evaluation program located in his area. The education/evaluation program usually consists of four or five sessions and may be conducted in a concentrated week-long program or in weekly sessions over a period of weeks. The program usually includes basic alcohol education and an evaluation of future

treatment needs. The DMV receives notice when the driver completes the program. Depending on the state statute, the driver may be eligible to have his license returned after he completes the education/evaluation program or he may be required to participate in further treatment if the evaluation indicates that its necessity. In South Carolina, the administrative process is used only for first offenders, and the offender must complete only an alcohol education program. In Maine, the number of previous offenses within the past six years will determine whether the driver will be required to participate in a recommended treatment program. A driver with no prior offenses is required to complete only education/evaluation program. A multiple offender must also comply with any treatment recommendations made in the education/evaluation program.

Once the offender complies with the requirements of the motor vehicle department, he becomes eligible for the return of his license. The DMV may return the license as a full or restricted license depending on the provisions of the statute.

Administrative "A" processes vary from state to state. The four primary variables involved in the processes are as follows:

- The type of DWI offender covered by the statute. South Carolina offers the administrative process only to first offenders while Maine covers all DWI offenders.
- Type of license returned. Some administrative "A" processes will return a full license while others will issue only a restricted license for a certain peeriod.
- Satisfaction of the treatment requirements. Some administrative "A" processes require completion of the required education or treatment, before reinstating driving privileges, while others will require only satisfactory participation.
- Return of the license. Some administrative "A" processes allow for early return of the license before the mandatory suspension period expires, while in others the return of the license at all is conditional

upon participation in treatment.

The reader may refer to the Maine and South Carolina case studies (see Appendix A) for a description of how these two states have incorporated these variables into an operating administrative "A" process. A recent study by the State of New York Department of Motor Vehicles (1978) describes an Administrative "A" approach as implemented by a heavily populated state.

Administrative "B"--Administrative Action Based on Alcohol/Driving Record

In this administrative process, the DMV initiates action to enroll persons who have bad records of alcohol-involved driving in education and tratment programs. These drivers are identified by means of routine driver record searches by the DMV. While conviction for drunk driving is certainly an important indicator, the DMV will also use other data to identify the alcohol-involved driver, such as alcohol-related accidents and reduced charges, such as reckless driving. Often, in administrative "B" processes the DMV takes action independent of the court's for the same conviction.

Administrative "B" processes are common through the United States. They appear most frequently as the following two procedures:

- The Driver Improvement Program. When the DMV, through a search of its records, determines that a driver has had two or more alcohol-related entries on his driving record, he is called in for a reexamination interview. Alcohol-related entries may include drunk-driving convictions, alcohol-related accidents, or reduced charges. The two-hour interview presents basic alcohol education. At the end of the interview the driver receives a specified period of driver's license probation.

  If a related entry appears on the driver's record during the probationary period, the license is suspended by the DMV for a specified length of time.

The driver is informed that he will not be eligible for return of his license until he has completed or is satisfactorily involved in an alcohol-treatment program. The driver is directed to go to an alcohol treatment agency in his area to enter a treatment program. At the local treatment agency, the driver is diagnosed and referred. The treatment agency then supervises the driver's participation in treatment and reports to the DMV on his progress. Typically, after a minimum period of suspension, the driver is eligible for the return of his license contingent upon satisfactory attendance in the treatment program until the treatment agency feels that it is no longer needed. If the driver drops out of the treatment program, the DMV will resuspend the license when it receives notice of noncompliance from the treatment agency.

For a more complete example of an operating Driver Improvement Program see the Washington state health/legal summary in Appendix A.

- The Habitual Offender Program. Many states have drunk-driving habitual-offender statutes allowing the state to revoke a driver's license for an extended period of time when the driver commits repeated "serious traffic violations." Some states, such as Washington, incorporate an inducement for treatment into the habitual offender process.

  The Washington DMV designates a driver to be a habitual offender if he is convicted of three "serious traffic offenses" within a specified period. "Serious traffic offenses" include drunk driving, reckless driving, driving while suspended, and negligent vehicular homicide. The DMV sends a certified copy of the driver's records to the prosecutor in the area in

which the driver resides. The prosecutor is under an obligation to prosecute the driver although in practice this is rarely done. If the driver is prosecuted and convicted, the penalty is usually revocation of the driver's license for a substantial period of time.

The judge may order a stay of the revocation, however, if he finds that the driver has successfully completed or is satisfactorily enrolled in an alcohol treatment program. If such a stay is granted, the DMV monitors the driver's progress while in treatment through periodic reports from the agency providing the treatment. The stay is in force for the full period of revocation and the driver must remain in treatment for as long as the agency believes necessary. If the DMV receives notice of another "serious traffic conviction" during the stay, the license is revoked.

For a more detailed example of a currently operating health/legal process using the habitual offender law, see the Washington health/legal summary in Appendix A.

Both the Driver Improvement Program and the Habitual Offender Program are designed to identify problem drinking drivers. Apart from the reexamination interview used in the Driver Improvement Program, these programs do not provide alcohol education to drivers who are essentially social drinkers.

Distinguishing Features of Administrative Processes

Administrative processes share several categories of characteristics. These include:

- performers of the health functions,
- uniform statewide procedures,
- licensing authority over convicted drunk driving, and
- reporting of alcohol-related driving convictions to

the DMV.

Pertinent characteristics are summarized in Figure 3-15 and are discussed below.

Performers of Health Functions. The agency that performs the diagnostic function is typically a treatment or education agency, which is funded and coordinated on a statewide basis. Some states perform the diagnostic function strictly by statute. In these instances, the statute requiring education or treatment for return of the driver's license specifies the rehabilitative program. For example, a statute may require that all drunk-driving first offenders complete a driver education and evaluation program in order to be eligible for return of the driver's license. This sort of statute is usually used only for first offenders. It is generally believed that multiple offenders are more likely to need individualized treatment, and as a result, treatment statutes for them tend to be flexible in treatment program stipulations.

Referral to treatment is always performed by the agency performing the alcohol diagnosis. Referrals to treatment tend to be made to a limited number of treatment agencies, apparently with the aim of acquiring some uniformity of treatment services.

Supervision is always a joint effort by the DMV and the agency performing the diagnosis and referral. Often, this agency is closely aligned with the DMV in order to facilitate the flow of information between the two agencies. If a treatment referral is made to another agency, the diagnostic agency continues to monitor the driver's progress and report the results to the DMV.

Uniform Statewide Procedures. Administrative processes are managed by a state organization. In participating jurisdictions every convicted drunk driver loses his license for a specified period of time, and the requirements for return of the license are the same throughout the state. For example, in Maine all DWI first offenders are required by the DMV to complete the Driver Education and

Figure 3-15
Summary of Distinguishing Features
of Administrative Processes

- Diagnosis and referral usually performed by a statewide treatment or education agency.
- Diagnosis performed as specified by statute in some states.
- Supervision is performed jointly by DMV and diagnosing/referring agency.
- Management by a state agency.
- DMV has authority to decide when to revalidate a suspended or revoked license.
- Reliable and accurate reporting of convictions to DMV.

Evaluation Program (DEEP), before they are eligible to get their licenses back. The DEEP requirement is the same for DWIs whether they are convicted in Portland, Augusta, or any other district court in Maine. In contrast, the court-based health/legal processes are used at the discretion of individual courts and judges. There is no known way to guarantee that any prosecutor or judge will require that drunk drivers seek alcohol education or treatment, and use of these programs is dependent on the judge's interest in them.

Authority to Reissue License. While not unique to states with an administrative health/legal process, it is an absolute requirement in an administrative process that the DMV have the authority to determine when to reissue a license after suspension or revocation for conviction of drunk driving. The DMV cannot make participation in treatment a condition for return of the license if the authority to return the license is vested with the court. In many instances, such as administrative "B" processes, the DMV must also have the authority to suspend or revoke the license.

Reporting of Alcohol/Driving Convictions to DMV. It is vital to the operation of an administrative process that the courts convict drunk driving defendants of the original charge and that they report notice of the conviction to the DMV. The problem of courts' reporting traffic convictions in general and drunk driving convictions specifically is not unique to administrative health/legal processes. However, since action can be taken in the administrative health/legal process only after notice of the conviction is received from the court, it takes on paramount importance. All of the DMV personnel with whom we talked admitted that failure to report convictions could be a problem but said they had no way of knowing how significant it was. Most indicated that they thought it was not as significant a problem as it once was, particularly in more populated areas.

Similarly, the administrative "B" processes that use the habitual

offenders law depend on the courts' adjudicating the cases of a high percentage of those drivers subject to the habitual offender statute. In South Carolina and Washington, personnel with the DMV and prosecuting agencies estimate that only ten to twenty percent of all those persons reported to the prosecuting agency by the DMV as meeting the habitual offender requirements are ever adjudicated as such. In order for such a process to have much effect on these "high risk" drivers, a much higher percentage of adjudication would appear to be necessary.

HYBRID PROCESSES

Rarely does a jurisdiction use only one of the "pure" case-disposition processes described above. Most jurisdictions have fused two or more of the processes into a hybrid process that might fall into one of the following two groups:

- hybrids that use different pure processes for different classes of drunk driving offenders, or
- hybrids that use different pure processes for the same offender.

These two groups are discussed below. Examples from our case studies are used where appropriate.

Different Processes for Different Drunk Driving Offenders

This hybrid group usually requires one or both of the following two conditions:

Different Level of Offender. Many health/legal processes differentiate between first offenders and those drivers with a record of multiple offenses. In some courts such as Greenville the differentiation may be made by statute; there, first offenders are eligible by law to receive a provisional license if they participate in an alcohol education program. As a result, the courts look to the State Department of Motor Vehicles to monitor compliance with treatment, thereby using an administrative process for first offenders. There is no such provision for multiple offenders, so

court-based processes are necessary for multiple offenders.

Attitudes of the court, as well as statutes, may differentiate between first and multiple offenders. In Lafayette, the court perceives a difference in the degree of supervision that needs to be provided to first or multiple offenders. As a result, first offenders are handled by a suspended sentence process and supervised by a court alcohol counselor, while multiple offenders receive more formal probation supervision **in addition** to supervision by the alcohol counselor.

Similarly, in Phoenix the court, through its prosecutor, distinguishes between those offenders who have not participated in the PACT charge-reduction process before and those who have. A drunk driver in Phoenix is ineligible for the PACT program if he has already completed the program before; repeaters are instead handled by a probation process.

Different Judges. Within one jurisdiction, different drunk drivers may encounter various health/legal processes because the judges within the court system may prefer one process over the others. This is especially true in more populous jurisdictions that have a large number of judges.

Most judges in these jurisdictions tend to select their individual processes from the probation and reduced-charge types. For example, in Portland almost all of the judges use a probation process for their drunk driving multiple offenders, but the type of probation varies from judge to judge. Many of the judges use probation "B" processes, yet a significant number use probation "D" instead. The two judges who hear most of the drunk driving cases in Pulaski County, Arkansas, also use different processes. The judge in North Little Rock uses a delayed-sentence process, while the judge in Little Rock employs a suspended-sentence procedure. Note that the judge in Little Rock also uses different processes for different levels of offenders.

Different Processes for the Same Drunk Driving Offenders

In some jurisdictions two or more health/legal processes are used to get the same offender into a treatment program. This often is the case when an administrative process is used within the state and when the courts are also active in requiring drunk drivers to participate in treatment or education programs. Maine is an excellent example. By statute, every driver convicted of drunk driving must participate in an alcohol education or treatment program in order to get his driver's license back. At the same time, Maine courts sometimes require the convicted DWI to participate in education or treatment under court supervision, usually through the use of probation or reduced sentence. The result is two different agencies may require what amounts to the same treatment program. The DMV, through its diagnostic agency, is careful to make sure that the treatment program in which the convicted driver is participating will satisfy both the courts' and the DMV requirements.

The state of Washington has a similar system. Many municipal and district courts in Washington require treatment as a condition of probation or sentence reduction. Many of the drunk drivers who are required by the courts to seek treatment are later identified by the DMV through the Driver Improvement Program or the Habitual Offender Law. Once again, the DMV is careful to make certain that the treatment program required is sufficient to meet the DMV's teatment requirements.

States that have more than one agency requiring that drunk drivers seek treatment have an advantage--it is much more difficult for drivers to slip through the legal system without becoming involved in a health process as well. If a judge does not believe in treatment programs and therefore does not use a health/legal system, drunk drivers are likely to be identified and referred to treatment by the Department of Motor Vehicles. The one disadvantage of having multiple systems is that it can sometimes become confusing to the person it is intended to help--the drunk driver.

CHARACTERISTICS COMMON TO ALL PROCESSES

The preceding subsections have identified generic types of case-disposition processes used in health/legal systems and have described characteristics that tend to distinguish each type from all others. This subsection presents a set of characteristics that are not unique to any specific type of case-disposition process, but are found almost universally among all active health/legal systems. These universal characteristics include the following:

- the use of some inducement to get the defendant to participate in treatment;
- the availability of certain key resources during the start-up and operational phases of the system;
- the ability to provide critical information at key decision points in a process;
- favorable attitudes toward the health/legal approach among personnel in all functional areas; and
- a favorable institutional and organizational climate for health/legal operations.

Before discussing these characteristics, one should note that a significant category of health/legal system characteristics, "statutory" or law-based characteristics, is **not** common to all processes. Rather, the presence of a specific statutory characteristic is likely to be a critical factor in determining the type of health/legal process that is used. For example, jurisdictions that have a statute prescribing mandatory sanctions for drunk driving often uses charge reduction to negate the impact of the required sanction. Similarly, jurisdictions that lack the authority to impose probation for drunk driving, a statutory characteristic, do not have probation available as a health/legal process.

Inducement for Participation in Treatment

This is perhaps the most fundamental and essential characteristic of all case-disposition processes. Only in rare cases can a drunk driver be **forced** to participate in a treatment program (that is, have no other choice but treatment), although some states have

statutes authorizing referral to nonmedical rehabilitation (for example, schools for drunk drivers). Instead, drunk drivers are **asked** to participate in treatment in exchange for a punishment that they perceive to be less severe than that which they perceive otherwise would be imposed. Little (1969) coined the phrase "coercive volunteerism" to describe this technique when used in conjunction with probation. Some practitioners find the term "carrot and stick approach" to be more descriptive.

Several ways of offering inducements for participation in treatment were set forth earlier in this section. The inducements are stated formally in terms of conditions that must be met both by the system and the defendant. For example, a court may impose plea-bargain conditions, probation conditions, or conditions of suspended or delayed sentence in order to motivate the defendant to seek treatment. These conditions may take the place of fine, jail, or license suspension. A driver licensing agency may also make a convicted drunk driver's participation in an education or treatment program a condition for keeping his license.

The conditions placed on the driver may be very specific or they may be open-ended, allowing for a wide range of treatment alternatives. Generally, when a court or DMV has a diagnostic report available before it imposes a condition, the treatment requirement will be specific, such as "respondent is to attend twelve meetings of Alcoholics Anonymous." Courts have also required convicted drunk drivers to participate in certain kinds of chemotherapy programs, for example, the use of the drug disulfiram (trade name, Antabuse). In view of the potentially serious side effects of such drugs in some individuals (Kwentus and Major 1979), great caution must be exercised to ensure that participants fully understand the risks involved and that screenings and treatments are properly administered.

When the court does not receive a diagnostic report containing treatment recommendations before imposing the condition, it is likely to use an open-ended condition. By doing so it leaves considerable latitude for the diagnostic agency to refer the defendant later to

appropriate treatment. A typical open-ended condition would be "respondent to participate in treatment as directed by the Council on Alcoholism." Another open-ended condition might be that a defendant be evaluated for possible alcohol-treatment.

Availability of Key Resources

The development of most health/legal systems can be traced to the efforts of one person or group of persons. That person or group troubleshoots the problems of a developing health/legal process and convinces the rest of the jurisdiction that the process should be used. In Park Forest, Illinois, the person responsible for developing the health/legal process was the village prosecutor. In Washtenaw County, a group headed by a district court judge was instrumental in getting the rest of the community to accept the health/legal concept. In Greenville, a former bail bondsman used his knowledge and contacts within the local courts to persuade the court to adopt a health/legal process.

The presence of a highly motivated person or group of people in the community is helpful to the development of that jurisdiction's health/legal system, regardless of the process used. This human resource is an important one and should not be overlooked by a developing system.

In addition, all of the health/legal systems studied had existing treatment resources available when the process was begun. The types of available treatment resources may determine how comprehensive a health/legal process will be; but all of the jurisdictions had a minimum or personnel within the court or in a local agency who were capable of performing diagnosis and referral, and all jurisdictions had treatment facilities to which at least a portion of the drunk drivers could be referred when the system was started. These treatment resources are of the type that exist in almost any community and include alcohol education programs, outpatient counselling programs, inpatient programs, Alcoholics Anonymous, or residential halfway houses.

Many of the jurisdictions studied, regardless of type of case-disposition process, were initially funded by a special grant. Of the ten jurisdictions studied, five were Alcohol Safety Action Projects (ASAP), which received federal funding for three years. All five jurisdictions continued to operate health/legal processes after the federal funds expired, although several were in substantially different form. Of the five jurisdictions that were not ASAPs, all but Park Forest owe their creation to some form of special grant or aid. The manner in which the special grants were used to develop health/legal processes varied. Lafayette's LATAP program was directly funded by the Louisiana Highway Safety Commission. The health/legal process in Columbus was greatly aided in its development and implementation by a state-funded "health/legal expert" whose responsibility it was to help promote and implement health/legal processes throughout Ohio.

The methods used to finance health/legal systems after the start-up period do not appear to be strongly dependent on the type of case-disposition process that is used. Some jurisdictions pay for health/legal services with funds from the general tax base. Other jurisdictions use special taxes levied on alcoholic beverages as a source of financial support. Still others have designed their systems to be more or less self-supporting by requiring the participating drivers to pay a fee as part of their bargain with the system.

Ability to Provide Critical Information

All health/legal systems require specific information about a drunk driver at various points in the process. A primary need is for a diagnostic report on the intoxicated driver's drinking patterns and for recommendations for his education or treatment. The manner, the style, or even the point in the health/legal process in which information is needed will vary from jurisdiction to jurisdiction. Diagnostic reports may be oral or written and will also vary in sophistication and length. In reduced-charge processes the

diagnostic report is given to the prosecutor to be used in deciding whether to reduce charges. In some probation and reduced-sentence processes, the diagnosis is included in a presentence report given at the time of sentence to the judge, who then determines which treatment conditions to require. In some administrative processes, the diagnostic report may be given to a DMV official to aid in his determination of what action to take on a convicted drunk driver's license. The diagnostic report can be made by one of a variety of agencies, including the treatment agency, a probation officer, or a court alcohol counselor. One common characteristic of all diagnostic reports is that they are used to determine the suitable alcohol treatment modality for the drunk driver. Examples of information contained in diagnostic reports are provided in Kerlan et al. (1971), Institute for Research in Public Safety (1974), U.S. Department of Transportation (1975a), and Boyatzis (1978).

Information is also needed during any health/legal process for the "treatment supervision report." This report is generally a statement of the progress the driver has made while participating in alcohol education or treatment. Like the diagnostic report, the supervision report can be oral or written and will vary in length and sophistication, but it is always prepared by the agency performing the treatment. That agency may transmit the report directly to the judge, prosecutor, or driver licensing official who originally required treatment, or it may be submitted through an intermediate authority such as a probation officer of alcohol counselor. The treatment supervision report may come at the completion of the convicted driver's treatment program, or reports may be submitted at various intervals during his treatment. Nevertheless, all treatment supervision reports are used by the person who imposed the treatment condition (whether a judge, a prosecutor, or a DMV official) to determine whether the defendant has satisfactorily completed treatment and is therefore entitled to a reduction in the charge or the sentence or an early return of the driver's license. Conversely, an unsatisfactory treatment supervision report can be used to deny a

promised inducement.

Favorable Attitudes

Active health/legal systems seem to be characterized by a general belief among system personnel that the health/legal approach is a reasonable way to deal with the alcohol-crash problem. The amount of support for the approach varies, from skeptical acceptance to near fanaticism, but few individuals in an active system seem to be opposed to it.

We found that support for the approach is often less than enthusiastic in the early stages of system development, but tends to grow to a generally high level as the system matures. Interactions between legal and health personnel are often strained at first because of conflicts in the roles and objectives of their respective institutions. Court personnel initially may be hesitant to accept the new procedures and personnel introduced into the legal process by a health/legal system. Diagnostic and intake workers from treatment agencies are sometimes regarded as trespassers on court territory when new court-treatment programs are begun.

When negative attitudes within a health/legal system do appear, they may arise unexpectedly and have devastating consequences. For example, in Pulaski County, Arkansas, all appeals for drunk-driving convictions made in municipal court are heard **de novo** by the circuit court. The judges of the circuit court do not, as a rule, favor treatment programs, so that even if a conviction is obtained in the new trial, the treatment alternative is eliminated and the health/legal system experiences a significant "failure." More will be said about this and other "failure modes" of health/legal systems in Chapter 5.

Favorable Institutional and Organizational Climate

Jurisdictions possess a legal system, including a court that adjudicates drunk-driving cases and a DMV that takes action on convicted drivers' licenses. Virtually every jurisdiction also contains a health system that diagnoses, refers, and treats clients

with alcohol problems.

A basic organizational characteristic of a health/legal system is the interfacing of the procedures of the legal system and the treatment functions of the health system. Thus, in a court-based health/legal system, the health functions of diagnosis, referral, and treatment are inserted into the normal court procedures of arraignment, conviction, sentencing, and supervision. Similarly, in a DMV-based health/legal system, the same health functions are inserted into the normal DMV procedures of license suspension, revocation, and reissuance. Any health/legal system that has developed, including the ten jurisdictions studied in this manual, has created an organizational link between these two systems.

Often, the union of the health and the legal system has followed the organization of the health system itself. In some states, such as Arkansas and South Carolina, the health system was organized statewide. In these states, a special agency was designated to distribute state and federal funds to the local treatment agencies throughout the state, usually be contracting with counties or with local treatment agencies for various alcohol treatment services. By centralizing the authority for developing treatment programs within one state agency, states could make a county's or agency's funding conditional upon its providing a specific level of treatment services; this would make more uniform treatment resources available to courts throughout the state. (For more specific examples of statewide treatment organization, see the Greenville and Pulaski County case summaries in Appendix A.)

In other jurisdictions, the organization of the health system has taken place on the local level. The most striking examples of local health system organization are the federally funded ASAPs. In all but a few of the ASAPs, the federal government provided financing for a local central agency to coordinate the diagnosis, referral, and treatment functions. Once the health functions performed by the treatment agencies were organized, they were made available to the legal system's drunk driver population.

The experience in Pulaski County is an example of the strategy used to organize a statewide health/legal system. First, the state of Arkansas, through the Office of Public Safety, developed a curriculum for an alcohol education program for drunk drivers and guidelines for their further treatment. Second, by means of its power to distribute funds to the treatment agencies, it "sold" the curriculum and treatment guidelines to the treatment agencies and managed to develop a comprehensive set of alcohol treatment resources throughout the state. After this was accomplished, a series of judicial seminars and other court contacts helped to link the courts and the treatment agencies and to convince municipal court judges to use the treatment resources for drunk drivers. This process could be applicable to the local and county-wide organization of the health system, which could just as easily be linked to the DMV instead of the court, as was the case in Maine.

It is not enough that a jurisdiction have individual agencies for performing the various health and legal functions. It is equally important that mechanisms exist for coordinating the activities of these agencies (see Poliskey 1979). Our studies of operating health/legal systems indicate that the more active and vigorous systems possess such mechanisms, but that the mechanisms tend to be informal. Typically, interagency coordination was accomplished by one or a few dedicated individuals rather formally constructed commitees or panels (see, for example, the Park Forest and Lafayette case studies). These individuals were particularly active in planning changes to systems.

PERFORMANCE OF CASE-DISPOSITION PROCESSES

The system designer is less interested in identifying different characteristics of health/legal systems than in knowing which combination of characteristics is best. Unfortunately, there is no way of specifying the "best" system, for at least two reasons. First, the worth of a system depends upon many factors whose combined effects are as yet unknown. We do not have a handy equation for

plugging in such factors as mandatory sanctions, performers of the health functions, method of financing, and judicial attitudes, and then calculating their value to the system. Further, we also do not know how to combine the value of each factor into an overall single measure of worth. Lacking a method for determining system worth for any given set of characteristics, we clearly cannot determine the particular set of characteristics that maximizes the system's worth.

The second reason for our inability to specify a "best" health/legal system is that the characteristics that might be best for one jurisdiction are not necessarily best for all other jurisdictions. As we have noted elsewhere in this manual, the needs, resources, and operating environments of health/legal systems vary widely and thus generate constraints that severely limit alternatives. For example, a jurisdiction with strongly enforced mandatory jail sentences and mandatory license suspension for drunk driving will find it difficult to offer acceptable inducements to participate in treatment through any of the reduced punishment processes. Similarly, jurisdictions that have statutes prohibiting plea bargaining will have trouble using a reduced-charge type of process. Of course statutes can be changed, but this requires time and resources that may make such a strategy unacceptable to some jurisdictions.

Thus, this manual does not attempt to specify any global "best" health/legal system. Instead, it will discuss the performance of various types of processes for jurisdictions in relation to their environments. It will also discuss characteristics that are desirable for any health/legal system, regardless of its case-disposition process. This information will be useful in selecting strategies for improving a jurisdiction's management of its alcohol-crash risk.

Performance Indicators

The yardstick for measuring performance will be the degree to which functional objectives are achieved and system constraints are

met. We use the term "performance" rather than "effectiveness" deliberately to underscore the fact that we are dealing with **functional** objectives rather than **ultimate** highway safety objectives.

It would be preferable to use quantitative measures of performance: number of arrests per drunk-driving violation for enforcement/case-finding functions, number of correct diagnoses per arrest for the adjudication/diagnosis functions, and number of favorable sanctioning outcomes per diagnosis for sanctioning/referral/supervision functions. Multiplying just these three measures together would give a handy measure of overall performance. Unfortunately, the data to do this are not available. Instead, a series of performance indicators will substitute for these quantitative measures (see Figure 3-16).

Four types of indicators are used for describing the degree to which functional objectives are met in a given process:

- resources available to perform each function,
- procedures that are used in each function,
- attitudes of the personnel who perform each function, and
- information needed for each function.

Performance indicators for the constraints that must be met by the case-disposition processes fall into three categories:

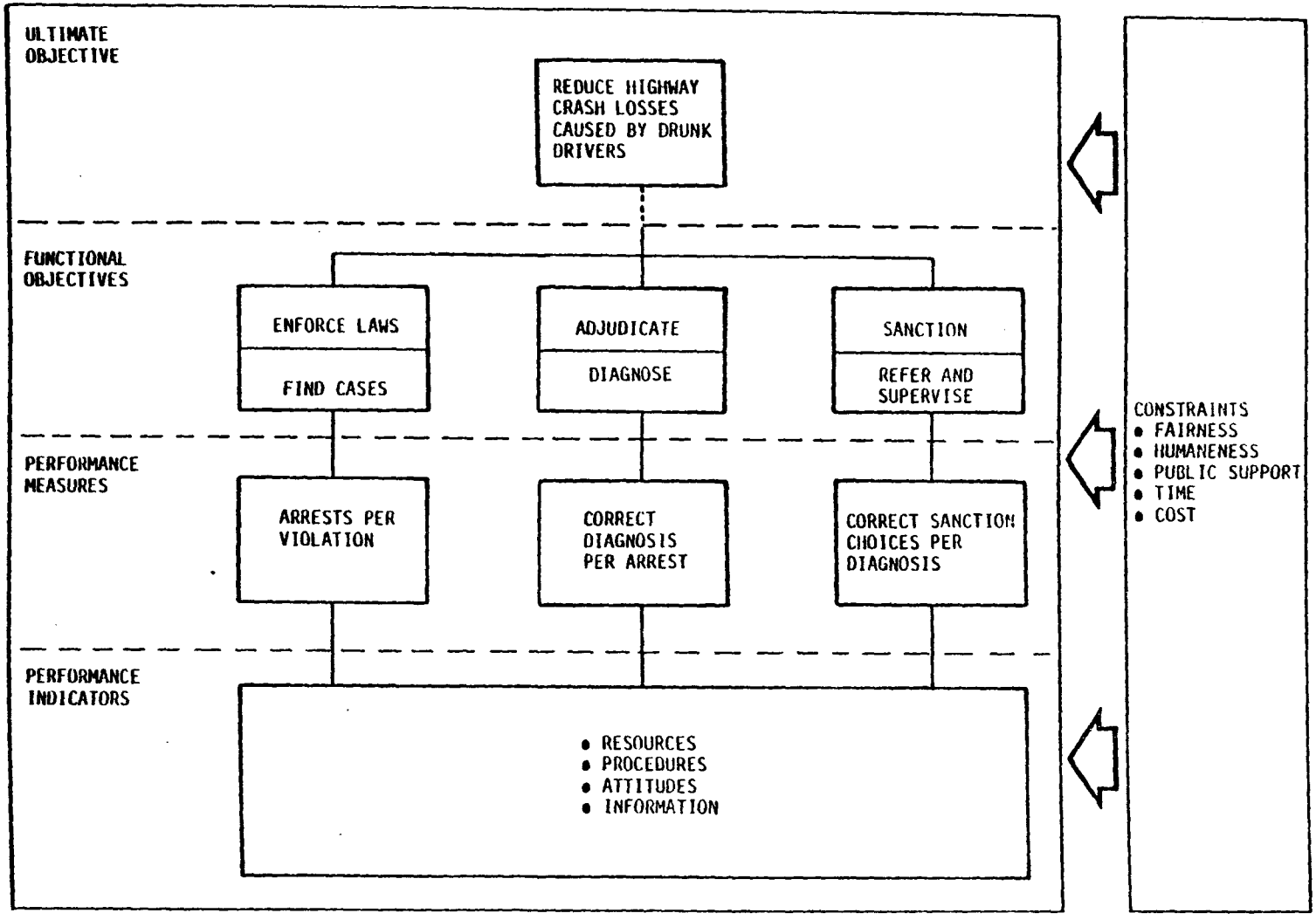
- fairness and humaneness toward defendants,
- processing time, and
- processing cost.

The remainder of this section discusses how each of the four primary case-disposition processes performs. For each functional area (for example, adjudication/diagnosis) each process is assessed in terms of the relevant performance indicators.

Enforcement/Case-Finding

None of the case-disposition processes offers inherently better **resources** for this function than any other process. All active

Figure 3-16
Structure for Analyzing the Merits
of Case-Disposition Processes



processes require sufficient numbers of qualified police officers to fill up the case-disposition "pipeline" with suspected drunk drivers.

Similarly, while the performance of this function is very much affected by the kind of **procedures** that are used, no single case-disposition process appears to offer any advantage over the others in this respect. Studies have shown that procedures that are complicated and time-consuming have an adverse effect on this function. Our own studies confirm this finding. Most police officers do not like to spend time at the station filling out forms or to travel long distances to have BAC tests performed. Most active processes we have studied are able to perform initial processing of an arrested drunk driver in about two hours or less.

Police **attitudes** also have a strong influence on the enforcement/case-finding function and are often influenced by procedures. All treatment-oriented processes are subject to a common objection among police officers that treatment in lieu of punishment is "letting the drunk driver off too easily." Reduced-charge processes are especially vulnerable to this criticism when they reduce the drunk-driving charge to a non-alcohol-related offense. On the other hand, reduced-charge processes often eliminate the need for a police officer to testify in court, a duty that the officers sometimes, but not always, regard as undesirable (they often receive overtime pay for court appearances). Also, research indicates that police attitudes about the nature and extent of the alcohol-crash problem have a strong influence on the decision to arrest (Joscelyn and Jones 1971; Planning and Human Systems, Inc. 1975; Arthur Young and Company 1974b; Oates 1974).

Statutes have a strong effect on both procedures and attitudes. Some jurisdictions have found that prearrest breath testing, as authorized by statute, has increased arrest rates, especially arrests of drivers with lower BACs (U.S. Department of Transportation 1975a). Implied consent laws have probably had a favorable effect on police attitudes in most jurisdictions by increasing the probability of prosecution and conviction. All statutes that reduce processing time will receive a favorable reception from police.

Finally, the need for police to provide a sufficient amount of valid **information** for subsequent decision-making does not seem to be affected by the type of case-disposition process that is used. Note, though, that the ability and proclivity of an officer to collect good data is affected indirectly by attitudes, procedures, resources, and statutes. Clearly, the performance of the police as case finders has an enormous impact on all subsequent "downstream" functions. It is possible to have too much enforcement, as well as not enough, in a system that is unprepared to deal with such a large caseload. The result of such an "embarassment of riches" can be in adequate processing of accused drunk drivers.

Adjudication/Diagnosis

Adequate **resources** can be available for adjudication and diagnosis in any type of process, and no process seems to offer any clearcut advantage over the others in this respect. Personnel (including prosecutors, judges, probation officers, court counselors, etc.) are the most critical resource for these combined functions. Competent personnel for diagnosis are particularly important where a wide range of treatment alternatives exist and when more specific determinations have to be made for use in referrals. In this case, it is important to have experienced alcohol counselors performing the diagnosis but it is unimportant which organization they work for (e.g., a probation department or a treatment agency).

Performing the adjudication/diagnostic function effectively also depends on having enough competent personnel to maintain a reasonable caseload. In Washtenaw County (which uses a probation process), a presentence investigation (PSI) takes about an hour, and each counselor conducts only four PSIs per day. Park Forest uses a group interview approach, diagnosing three or four individuals at a time.

To maintain a reasonable caseload, the staff needs to have adequate time for diagnosis. Our studies indicate that about four to eight weeks time is required in processes that conduct diagnoses prior to the defendant's returning to court (for example, probation

processes or some reduced-charge and reduced-sentence processes). This amount of time allows for the following activities:

- a probation interview (e.g., Washtenaw County), or
- a treatment agency interview (e.g., Pulaski County), or
- interviews by probation and treatment personnel, or
- a basic alcohol-education program where such a program is a part of the PSI procedure (e.g., Columbus and Lafayette), or
- contacts with other agencies and individuals to learn more about a client's drinking-driving problem, and
- preparation of reports.

Efficient **procedures** can help make better use of time and can contribute to achieving high diagnostic rates of seventy-five percent or more. Again, no specific process stands out as having inherently better procedures in all respects than the others, although we have found that administrative processes tend to have the highest diagnostic rates. Typically, administrative processes have statutes **requiring** diagnosis and referral to treatment as a condition for return of the driver license (for example, Maine's statutes). Court-based systems are dependent upon the personal policies of prosecutors and judges regarding diagnosis, and policies requiring diagnosis of all or nearly all defendants are not universal. Of course, courts are able to frustrate administrative processes by failing to report convictions or by reducing charges to offenses not requiring diagnosis.

Prearraignment briefings, such as those conducted in Lafayette, appear to be an efficient procedure. Typically, the public defender and the alcohol counselors meet with a group of defendants before their arraignment to explain the drunk-driving charge and the alternatives. Almost all defendants plead guilty at the arraignment that follows the briefing. Reduced-charge processes also promote efficiency by obviating the need for an adjudicative hearing. For

example, in Park Forest all accused drunk drivers (including "social drinkers" as well as "problem drinkers") are given a chance at their arraignment to enroll in a treatment program. If they accept the offer (as nearly all do), the program starts immediately.

Adjudication and diagnosis in all case-disposition processes are strongly affected by the **attitudes** of the individuals who perform the functions. Each person should support the philosophy and procedures that are used to reduce alcohol-crash risk. Moreover, they must also believe that other "actors" in the process are doing their jobs effectively and are not frustrated or negating the efforts of other actors. As noted above, administrative processes appear to be the least vulnerable to unfavorable attitudes of court personnel because they leave less room for discretion about referral to treatment programs. (They could, perhaps, be questioned on the grounds of fairness and humaneness because of their lack of flexibility in this respect.) Also, reduced-charge processes can create unfavorable attitudes among all system personnel who believe in severe and sure punishment for drunk driving. By contrast, probation processes can cause failures to prosecute and convict, and thus to treat drunk drivers because prosecutors or judges may believe the punitive sanctions are too harsh.

Adjudication and diagnosis both require accurate and timely **information** for decision-making. The information needed for diagnosis includes historical facts about prior driving violations in general, alcohol-related driving violations, and other offenses in which alcohol played a role. Information about prior highway crashes involving alcohol is also needed, as are other background information and psychometric data that might indicate a problem with alcohol. Also, adjudication and diagnosis both require accurate information about the current violation. Good driver-record systems require the following:

- dispositions of alcohol-related offenses are entered in the system,

- accident reports are entered in the system,
- driver records are retained for an adequate time period,
- driver records are accurate, and
- driver records are accessible to the user when needed.

The most serious deficiency of any case-disposition process with respect to these requirements is the failure of reduced-charge processes to provide a record of past alcohol-related offenses for later use in diagnosing a drunk driver. Systems that have a two-tiered drunk driving offense can overcome this deficiency by reducing the charge to a lesser **alcohol-related** offense. It has also been suggested that driver records be annotated to indicate when the alcohol-related charge has been reduced to a lesser non-alcohol-related charge and a conviction has been obtained for the lesser offense. However, this approach is open to attack on due process grounds because charges, as contrasted with convictions, are an impermissable basis for sentencing.

Anything that delays final adjudication and reporting of the conviction to the DMV will necessarily make it difficult to keep timely records. Both reduced-charge and delayed-sentence processes are vulnerable to this problem. Lack of up-to-date records can be especially serious if a driver is arrested in another jurisdiction during the period when the final outcome of a prior adjudication is pending.

Access to driver records can be a problem in any process that uses agencies outside the court. For example, treatment agencies may not have rapid access to driver records for use in diagnosis. Timely and complete driver records are perhaps best provided in administrative processes because administrative agencies also are responsible for driver records and have statewide jurisdictions.

Finally, having good information for determining the facts about an accessed violator depends on the availability of complete and accurate police reports. Such reports are more likely to meet the

information needs of adjudication and diagnosis when police officers have favorable attitudes about the process being used (see the earlier discussion of police attitudes). Again, reduced-charge processes seem to be at a disadvantage in this respect.

Sanctioning/Referral/Supervision

A wide range of alternative sanctions is a desirable resource of any case-disposition process. Court-based processes allow for more flexible and individualized sanctions than DMV-based systems, which have their sanctions prescribed by law. This is especially true when the court holds the power to suspend or restrict the driver license. DMV-based systems are limited to restriction or suspension of the driver license and thus can offer only one type of inducement for participation in treatment. Some drivers, particularly some multiple offenders, may not view keeping one's driver's license as a particularly attractive trade-off for treatment. Hybrid systems may offer an advantage in this respect. For example, South Carolina deals with first offenders through an administrative process based on a provisional license law, while multiple offenders are handled by the courts.

All types of court-based processes have essentially the same type of traditional sanctions available unless they are constrained by statutes. Some statutes have a powerful effect on the type of process that is used in a given jurisdiction, as has been noted elsewhere in this manual. However, statutory environments that favor court-based systems in the first place usually do not restrict the range of available sanctions. Reduced-charge processes are an exception, since the final charge may not allow for the desired severity of sanctions or, indeed, for any punitive sanction if the charge is dropped completely as a part of the treatment bargain.

Court-based processes usually have a broader range of nontraditional treatment sanctions than DMV-based processes because statutes may rigidly prescribe specific treatments for use by the DMV. To use the range of treatment available to them, the courts

must have working arrangements with the agencies that offer those treatments. A range of treatment under the current state of the art includes:

- alcohol/driving education,
- group and/or individual counseling, and
- inpatient treatment.

Procedures for referring drunk drivers to treatment are in general less uniform in court-based processes than they are in DMV-based processes, but are usually more flexible. Some court-based processes rely on information provided by trained diagnostic personnel, while others do not. However, there appear to be no large differences in referral procedures among different types of court-based processes.

All types of case disposition can employ efficient procedures for supervising treatment. Such procedures require:

- adequate resources to permit a reasonable caseload for supervision;
- good communication between all agencies involved, that is, the court, the DMV, and treatment agencies;
- good communication between individual elements of the court, for example, the judge and the probation officer;
- well-documented supervision activities; and
- good working relationships between supervisors and clients.

Effective procedures for "informal" action against a client who has failed to attend treatment sessions are particularly important in any type of process. Official action can be time-consuming and expensive; this is especially true in probation processes because probation is a legal status and must be revoked before any other official sanctioning can occur. Supervisors need to maintain a credible threat of punitive action throughout a treatment program, thus keeping pressure on the client to complete the program.

Favorable **attitudes** are just as essential for sanctioning,

referral, and supervision as they are for other functions. In particular, sanctioning must have a suitable range of alternatives available and be willing to impose them. DMV-based processes have fewer problems in this respect than court-based processes. The DMV imposes sanctions that are mandated by statute and implemented through administrative rules and regulations. As a result, there is very little discretion except where the DMV is given the authority to issue restricted or hardship licenses.

The opposite is true for court-based processes in which judicial discretion often determines the sanctions to be imposed. The larger the jurisdiction, the less likely it is to have a uniform sanctioning policy. In our case studies we found that in larger jurisdictions two or three judges strongly favor treatment alternatives, one or two do not believe in them at all, and the remainder do not have strong views on the subject but tend to follow the lead of the treatment-oriented judges. Judges are sometimes unwilling to impose the treatment as part of a reduced-charge process. They tend not to reduce a drunk-driving charge unless they believe there is not a "good case" against the defendant.

All types of case disposition rely on **information** in diagnostic reports to decide where to refer a drunk driver. The requirements for such information were discussed in the preceding section. Processes in which diagnosis is possible before entering treatment have an advantage in being more specific about treatment conditions. As a result sanctioning authorities are less likely to be confused about what treatment was recommended, since the judge or the DMV has ordered the treatment.

The Alcohol Safety Action Projects (ASAP) of NHTSA used the so-called "favorable outcome ratio" as a measure of case-disposition process performance. This ratio is defined as the fraction of arrested drunk drivers who receive some kind of appropriate sanction, either as a result of a conviction or as a result of a treatment bargain. Reduced charges would appear to have the highest favorable outcome ratio because they provide greater motivation for treatment.

Motivation is greater because:

- reduction of the drunk-driving charge is perceived as a strong benefit by the defendant;
- the drunk driving charge remains pending until satisfactory completion of treatment; and
- early intervention is achieved; that is, referral to treatment occurs early in the process, close to the date of arrest.

Favorable outcome ratios also would appear more likely when a defendant is required to return to the sanctioning authority after treatment for "final judgment." There may be a tendency for defendants to perceive the conditions of probation or suspended sentence as less of a threat when no final court appearance is required. In reduced-charge, delayed-sentence, and administrative processes, the benefit for participating in treatment is not given until treatment is completed. This seems to increase the likelihood that treatment will be completed.

Constraints

As was noted above, the performance of a case-disposition process is dependent not only on its achieving functional objectives, but also on its meeting certain conditions or constraints. A process that arrests many drunk drivers and imposes the best possible mix of punishment and treatment on them cannot be considered to have a high level of overall performance if its methods are unfair, time-consuming, costly, and lacking public support.

The constraint of **fairness** is a fundamental human right imposed on governmental operations by the Constitution. Derivative rights include, among others, the right to a speedy trial, the right to counsel, the right to due process of law, and the right not to be punished cruelly or inhumanely. All of the commonly used types of case-disposition processes have the capacity for meeting these constitutional requirements and appear to have done so in the jurisdictions that were studied. However, different processes

generate different "fairness" problems. For example, Park Forest's reduced-charge system is particularly sensitive to the need for getting a defendant's informed consent to waive his right to a trial. The prosecutor there requires the defendant to have an attorney as counsel to participate in the program. In addition, Park Forest (as well as many other jurisdictions that use a pretrial reduced-charge process) have provisions for the defendant to waive the requirement for a speedy trial. In probation and administrative processes, the defendant's right to challenge diagnoses in a hearing is an integral part of the probation concept.

A major problem in attempting to analyze and compare health/legal systems is the lack of hard data on system operations. This makes it virtually impossible at this time to develop quantitative estimates of two of the most important health/legal system constraints--processing time and cost. Only subjective statements can be made about time and cost factors for most systems at the present.

Obviously, any case disposition that results in treatment for a given defendant extends the **time** required to complete the process. However, the kinds of activities that are delayed differ among processes. In reduced-charge processes adjudication is delayed, often for a considerable time. This requires a court to keep the case open longer before conviction. By contrast, probation and suspended sentence cause a delay after sentencing. Delayed-sentence processes extend the time between conviction and sentencing. In fact, states have statutory limitations on the amount of time that can elapse between conviction and sentencing.

Apparently no great difference exists among processes in the total time they take to complete case disposition, as long as they are part of well-designed systems. If any part of any process creates a bottleneck, delays will be created throughout the system. Nevertheless, reduced-sentence processes seem more vulnerable to delays because their more formal procedures create more opportunities for delay. Continuances and appeals are common in jurisdictions

using reduced sentences, and jurisdictions that permit jury trials can become overburdened quickly with cases even when they possess significant judicial resources. The recent experience of Portland provides a prime example of the latter problem.

Total processing time is not the only indicator of the system's performance with respect to the time constraint. The time required to get a defendant into a treatment program is also important to achieve what some analysts call "early intervention." Reduced-charge processes perform best in achieving early intervention. Probation processes that place convicted drunk drivers in treatment programs during the presentence period intervene earlier than probation processes that require individuals to return to court after the presentence period and then enter a treatment program. Administrative processes would appear to have the worst performance with respect to early intervention because they require both a court conviction and a notice of the conviction prior to referral.

The total **cost** of a process depends on many factors, including:

- total number of functions that are performed,
- time and other resources required to perform the functions for each defendant procssed, and
- number of defendants processed per unit time.

Reduced-charge processes will tend to be relatively less costly for a given scale of operations because they bypass many court-performed functions completely. Probation processes are more likely to be placed at the other end of cost spectrum because they tend to require the full range of activities and services of legal and health subsystems. Administrative and other reduced-sentence processes tend to lie between reduced charges and probation in cost per case.

The ability of a system to finance a sufficient level of activity is obviously an important consideration. In general, operations are financed in two ways: by the state or local government or by the defendant. Government financing can be provided from the general tax base or from special tax funds, for example, a tax on alcoholic beverages. Defendant financing is provided through court funds and

costs and through clients' payments of fees to treatment agencies. Sometimes the fees are paid by insurance companies as a benefit of health insurance. Most jurisdictions we have studied use a mix of financing strategies, the most common one being fines, court costs, and the general tax base. Some jurisdictions (Park Forest, Illinois, for example) say that defendants finance the entire cost of operations. In any case, no particular type of process appears to have an advantage over any others in financing its operations. Neither is there any evidence that any particular method of financing is associated with higher performance.

Unfortunately, no useful data are available to determine whether one type of case disposition promotes more favorable **attitudes** among the general public than other types do. Our project did not have sufficient resources for surveying public attitudes in any of the jurisdictions included in the study, and the literature on the subject provides little information. It seems likely that any type of process could achieve favorable attitudes if it provides the public with clear information about alcohol-crash risks and the jurisdiction's approach to reducing that risk.

In closing this section, we note that some jurisdictions have encountered difficulties in trying to resolve conflicts between two different classes of constraints. For example, in Oregon, a conflict arose between time and fairness constraints. The courts became clogged because all individuals charged with traffic **crimes** (including drunk driving) have the right to a jury trial. To overcome this problem, legislation was passed changing first-offense drunk driving to a traffic **infraction**, for which no jury trial was guaranteed. The Oregon Supreme Court later held the new law invalid because there was no real difference in procedures for handling defendants accused of crimes and infractions. The need for thorough analysis of the total impact of system changes before implementation is clear from this example and from many others that could be cited. Methods for conducting such an analysis are discussed in Chapter 5.

SUMMARY

Health/legal systems can be classified by the process they use in disposing of drunk driving cases. Four basic types of such case-disposition processes can be identified:

- reduced charge,
- probation,
- reduced sentence, and
- administrative.

Each type has several variants that are generated to a large extent by variations in the ways the health functions are performed. Individual differences in style and procedures are common even among processes of the same type and subtype, so that it is very unlikely that one will ever find two health/legal systems that are exactly alike in every respect. Further, many jurisdictions have hybrid systems that use more than one of these four processes.

Nevertheless, active systems that use the same type of case-disposition process do tend to have many common characteristics. **Reduced-charge processes** trade a reduction or dismissal of the original drunk-driving charge for participation in a treatment program. Sometimes, jurisdictions that use reduced charges have more than one level of drunk-driving offenses so that a reduction can be made to a lesser alcohol-related offense rather than to some other offense such as reckless driving. Reduced-charge processes bypass many of the legal functions of the traffic law system through the use of plea bargaining; courts thus must have the statutory authority (explicit or implicit) to use plea bargaining. Reduced-charge processes are often coordinated by the prosecutor's office, although diagnosis and referral are usually performed by some other agency, and supervision is performed by the referring agency. Treatment conditions are, on the whole, less specific than in other processes and are often open-ended. Reduced charges tend to arise as a response to conditions that appear to block or inhibit performance of traditional adjudication and sentencing. Such conditions include mandatory sanctions prescribed by statute that remove some incentive

for participation in treatment and large court-backlogs that preclude rapid processing.

Probation processes are the traditional and most common mode of case disposition in health/legal systems, and they are most often found in jurisdictions that have used probation for dealing with other types of offenders. Probation encourages participation in treatment by reducing the punishment for drunk drivers who accept treatment. An individual has to be convicted of drunk driving in a probation process and is then "assigned" to a treatment program as a condition of probation.

Diagnosis and referral are performed by probation officers, court counselors, and/or treatment agency personnel for probation processes that diagnose prior to sentencing. Postsentence probation processes tend to use only treatment agency personnel for diagnosis and referral. Supervision is a three-tiered process involving interaction between the judge, the probation oficer, and treatment personnel. There is, in fact, a relatively "heavy" supervision requirement in probation, thus many treatment agencies favor supervision by the probation agency. Obviously, availability of probation services is a prerequisite for this process, and the amount of available personnel affects the choice of probation processes, for example, whether or not to use presentence investigation and if it is used, what it should consist of.

Reduced-sentence processes either suspend or reduce the sentence in exchange for the defendant's participation in a treatment program. Such processes are often used in lieu of a probation process when the requirements for the latter cannot be met, for example, when the court is not authorized to impose probation or when there are inadequate resources for probation. Performers of the health functions are similar to those in probation processes, except that probation officers are seldom used. Supervision is relatively "light" with a reduced sentence and is most commonly carried out by personnel from treatment agencies.

The fourth major type of case-disposition process is the

administrative process. Its main distinguishing feature is the use of a nonjudicial administrative agency to coordinate the health functions. Drunk drivers enter the process either through the courts after being convicted, or through routine driver record checks by the administrative agency. The inducement for participation in treatment is usually a reduction in the period of suspension of the driver's license; thus, the administrative agency must have authority over the driver licensing. Administrative case-disposition procedures are relatively uniform among the various jurisdictions in a state and are not strongly dependent upon the attitudes or the personal views of judges. Often administrative systems have statutorily prescribed treatment programs for first offenders, in which statewide agencies provide the treatment. Sometimes diagnosis and referral are performed by the same statewide agency, but in any case they are seldom performed by a court-based agency. Effective statewide driver-record systems are needed to make the process work.

Health/legal systems often use two or more of the four "pure" processes in handling drunk-driving cases. Typically, these hybrids use different pure processes for different offenders or classes of offenders (for example, first vs. multiple) or different pure processes for the same offenders. In the first type of hybrid, first offenders may be handled by an administrative process, for example, while multiple offenders may be handled by, say, a probation process. Different judges in a given jurisdiction may also use different processes for different offenders, depending on judges' personal preferences or other factors. Systems that use different pure processes for the same offender often use an administrative process to handle one type of treatment (for example, alcohol education) and some other process for another type of treatment (for example, group therapy).

Some characteristics tend to be associated with all health/legal systems, regardless of the type of case disposition they use. First, an **inducement** to get the defendant to participate in treatment is found universally among all health/legal treatment, since a defendant

can rarely be forced to participate in a treatment program.

Also, active health/legal systems tend to have key **resources available** during the start-up and operational phases of the system. Highly motivated and dedicated individuals and groups are perhaps the most important resource during development and early operation of the system. Moreover, most systems have treatment facilities available before the design phase, so that a separate program to develop an initial treatment capability is usually not needed. Funding resources are often provided by a special grant. ASAP and NHTSA 402 programs have helped to start many health/legal systems. After start-up, financing occurs in a variety of ways, none of which appears to be strongly related to the type of case-disposition process that is used. In general, financing may be provided through funds from the general tax base, special taxes, and/or client fees. There is evidence that health/legal systems can be made to be self-supporting.

The ability to provide **critical information** at key decision points is a third common characteristic among health/legal systems. Diagnostic reports and treatment supervision reports are the major vehicles for communicating such information. Diagnostic reports describe the nature of a defendant's drinking-driving problem and make recommendations about punitive and rehabilitative sanctions. Treatment supervision reports describe a defendant's progress in the prescribed treatment program and may be either written or oral.

Our discussions with health/legal system personnel around the country indicate that **favorable attitudes** toward the health/legal approach are common among system personnel in all types of processes. Individuals are not always enthusiastic supporters of the concept, especially in the early stages of development, but they seldom are strongly opposed to it. Attitudes are often enhanced by the enthusiasum and efforts of key "change agents" in a jurisdiction.

The last major universal characteristic of active health/legal systems is the existence of a **favorable institutional and organizational climate** for health/legal operations. Viable legal

and health systems exist within a jurisdiction, and there are workable arrangements for interfacing those two systems. Often the synthesis of the two systems follows closely after the organization of a more unified health system that provides uniform treatment facilities on a local, county-wide, or statewide basis.

No single set of characteristics can be designated as optimal for all jurisdictions. First, no suitable criterion exists for making an optimal choice of characteristics. Second, even if there were such a criterion, it could only be applied to individual jurisdictions because of the great differences in operational environments among jurisdictions.

Nevertheless, generally favorable and unfavorable attributes can be identified. For example, our examinations of health/legal systems suggest that **reduced-charge processes** tend to be more efficient and less costly because they bypass many of the formal judicial functions of the health/legal system. They also provide early intervention of drinking-driving behavior and are able to achieve high percentages of favorable case-disposition outcomes with relative ease. On the other hand, reduced charges often fail to gain the wholehearted support of some system personnel (especially police officers) because of their perception that the process lets drunk drivers off too easily. In fact, punitive sanctions will be limited in severity by the statutory limits of the reduced charge and are eliminated entirely if the charge is dropped. Furthermore, the most appropriate target group may not be reached at all in some reduced-charge jurisdictions where prosecutors are unwilling to "plea bargain down" if they have a strong case. The most serious shortcoming of reduced-charge processes occurs when the lesser charge is not alcohol-related and there is no record of the original charge. This creates the possibility of losing track of repeat violators and decreases the likelihood that the system will deal appropriately with such violators.

Probation processes are less likely to face this problem because their final disposition is usually a conviction on the original

drunk-driving charge. They also tend to have better-than-average resources for performing the health functions and have good leverage for getting defendants to complete their treatment programs. Intervention into a defendant's drinking-driving problem is usually not as early as in reduced-charge processes, but it can be made acceptably early. The most serious negative features of probation are its relatively high cost and its proneness to delays. Both of these disadvantages are due mainly to the relative complexity and formality of probation procedures. This makes it difficult for treatment supervisors to interact informally with clients to ensure compliance with the condition of probation. Some probation processes do not require a final court appearance, and this also tends to decrease the likelihood that a drunk driver will complete the specified treatment program.

The positive and negative attributes of **reduced-sentence processes** are similar in many respects to those of probation processes. However, reduced-sentence processes tend to be less formal, more flexible, and possibly less costly. Their chief negative feature is their general lack of "intensity" in performing the health functions. The ultimate force of the formal condition of probation is not present in the reduced-sentence process; as a result it is more difficult to achieve compliance with the treatment conditions.

Administrative processes offer several unique advantages over the others. Because of their statewide status and their statutory basis, they operate more uniformly and are less vulnerable to the whims of individual adjudicators. They will also tend to have high diagnostic rates and to have better record systems. Their main negative features also flow from their statutory basis. They are less flexible, particularly with respect to punitive sanctions, and are sometimes opposed by judges who resent the loss of judicial perogatives in tailoring sanctions to meet individual needs. Also, because they often add more steps to the total case-disposition process, they do not provide as early intervention as other types.

Nevertheless, they appear to offer no large cost disadvantages over most alternative processes. Finally, drunk drivers must be convicted to enter administrative programs. Judges sometimes hesitate to convict for drunk driving because they believe that the formal punishments (e.g., loss of driving privileges) and the informal punishments (e.g., higher insurance rates) are too harsh.

Better descriptive and evaluative information is needed for making more specific and detailed statements about the nature and effects of various kinds of health/legal systems. The next chapter identifies essential information for describing a health/legal system, and Chapter 6 deals with information needs for determining a system's effectiveness in achieving explicit highway safety objectives.

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4

Describing and Classifying Health/Legal Systems

The first step in any program of change is to describe that which is to be changed. A good system description will provide a basis for understanding what one's present system is doing and the reasons it operates the way it does. It will also provide a means for examining possible system changes in terms of their effects on all parts of the system and, ultimately, on the working objectives of the system. Finally, the system description will provide a mechanism for relating a given system to other jurisdictions' systems and for profiting from the experience of those jurisdictions. In short, a comprehensive system description is the next best thing to a model of your system and is essential for identifying deficiencies, designing improvements, and performing evaluations.

In this section we present a method for developing a detailed and comprehensive description of any jurisdiction's health/legal system and for placing that system within the framework developed in the two preceding sections. Information needed for describing and classifying a health/legal system is identified, and steps that can be taken to develop such information are outlined. Consistent with our risk-management approach, we divide our system description into three parts:

- description of the drinking-driving problem that is being addressed by the health/legal system;
- description of the health/legal system itself and the environment within which it operates; and
- description of the performance of the system in meeting its functional objectives.

These three components of a system description are discussed separately in the remainder of this section. We also indicate how a

system described in this way can be classified in the terms used in the preceding section of the manual.

DESCRIBING YOUR JURISDICTION'S DRINKING-DRIVING PROBLEM

Although the major concern of this manual is the design and evaluation of health/legal systems, some attention must be given to defining the problem that generates a need for such a system in the first place. It is not our intention to write a treatise on highway safety problem definition, but we do believe it necessary to list some of the major elements involved in defining a jurisdiction's alcohol-crash problem. We urge the reader to examine some of the more detailed material on this subject cited at the end of this chapter.

Information Needed

The kinds of information needed to describe the alcohol-crash problem at the national level were indicated in Chapter 2 of this manual. The information needed to define problems at the local level where most health/legal systems operate is similar, but more detail is necessary. Further, you will need to describe not only your overall alcohol-crash problem, but also that part of it that your present health/legal system addresses.

Two basic types of information are needed to describe your overall alcohol-crash problem:

- information about drinking drivers who are **involved** in highway crashes; and
- information about the likelihood that alcohol-impairment of the involved drivers **caused or contributed** to their crashes.

With respect to crash involvement of drinking drivers, the following types of information are needed:

- number of fatal crashes, personal injury crashes, and property damage crashes each year involving drivers at various blood alcohol concentrations (BAC);

- conditions under which the crashes occurred, for example, day of week, time of day, and location;
- characteristics of the drivers of vehicles involved in the crash, for example, age, sex, marital status, drinking patterns, occupation, and education.

To generate information about the causes of crashes, you will either need information about a comparable group of drivers who were not involved in crashes, or clinical estimation about the role alcohol played in causing crashes.

To describe that part of the alcohol-crash problem that is being addressed by your present health/legal system requires information about the prior alcohol-crash involvement of individuals who have been processed by your health/legal system. Again, the number and severity of such crashes, the conditions under which the crashes occurred, and the characteristics of the drivers are required. Statements about the role of alcohol in causing the crashes will also be useful.

Since the field of highway safety is not yet a science, total reliance on quantitative data is inappropriate. Also, some jurisdictions do not possess the resources to conduct scientifically rigorous analyses of their alcohol-crash problem. Thus, the subjective judgments of health/legal professionals (e.g., police officers, probation officers, judges, physicians) should be used to augment the objective data.

Acquiring the Information

The best source of information about crashes that involve drinking is reports prepared by trained teams of accident investigators. BAC measurements in such reports are taken at the scene of the crash, at hospitals, or at the facilities of coroners or medical examiners. The reports also contain a wide variety of information about the vehicles, the highway environment, and the drivers. Estimations of causal factors, including alcohol, are sometimes made by the investigating team.

Comparison groups of drivers for studying alcohol as a causal factor are often found through the roadside survey technique (U.S. Department of Transportation 1975a). In these surveys drivers from the traffic stream are stopped and asked to submit to a BAC test and to answer questions about their drinking and driving habits. Jurisdictions that participated in NHTSA's Alcohol Safety Action Projects (ASAP) regularly conducted such surveys to determine if their activities were having any effect on the number of drunk drivers using the roads.

Unfortunately, in-depth accident investigations and roadside surveys are expensive and time-consuming and will therefore not be feasible for many jurisdictions to conduct on their own. In some cases you can obtain support from national and state units of government. For example, jurisdictions that will be studied by accident investigation teams from NHTSA's National Accident Severity Study (NASS) might utilize applicable results and could work with NHTSA to see that NASS data meet local as well as national needs.

When detailed clinical or roadside survey data are not available, less-precise estimates will have to be made. Often accident reports prepared by police officers indicate whether the driver had been drinking, but such information is based on the subjective judgment of the investigating officer and may not be accurate. When all else fails, a rough idea of a jurisdiction's alcohol-crash problem can be obtained by applying research findings from other jurisdictions. For example, a first estimate of the number of fatally injured drunk drivers in a given jurisdiction could be obtained by multiplying the total number of driver fatalities in that jurisdiction by the estimated national percentage of fatally injured drivers with BACs of .10% w/v or more. Thus, a jurisdiction with 100 driver fatalities in a year might estimate that 100 x .47 or 47 fatally injured drivers were drunk at the time of their crash (Jones and Joscelyn 1978). Note that this is not the same as saying forty-seven percent of all highway crash **fatalities** involved drunk drivers because the BACs of drivers who survive fatal crashes have not been determined on a

national basis.

Information needed for estimating the nature and extent of that portion of the alcohol-crash problem being addressed by your health/legal system should be developed from the records of appropriate health/legal system agencies. Driver records from your state's driver license agency will show reported convictions, and, sometimes, punishments imposed and other information. Probation departments may have extensive case files on individuals who were diagnosed and referred to treatment, court clerks may have records on case dispositions, and so on.

A major difficulty in using information from agency records for problem analysis is that the data are seldom aggregated, so that considerable data reduction is often required. Incomplete, inaccurate, and out-of-date files also make analysis of the problem difficult and the accuracy of the results unpredictable.

DESCRIBING YOUR HEALTH/LEGAL SYSTEM AND ITS OPERATING ENVIRONMENT

The general nature of information needed to describe a health/legal system is apparent from the discussion of types of systems in Chapter 3. In this section we specify these information needs in more detail and indicate how they can be met in any given jurisdiction.

Information Needed

The information needs for describing your present health/legal system are best stated in terms of the elements of the system, that is:

- its **functions** (what it does in order to accomplish its objectives);
- its **requirements** (what it needs in order to do what it does); and
- its **outputs** (what it produces in doing what it does).

The most general **functions** of a health/legal system have been

identified in prior sections of this manual as law generation, enforcement, adjudication, sanctioning, diagnosis, referral, and treatment. Each of these functions can be broken down further into subfunctions, and the breakdown can continue until you reach the desired level of detail. Typical subfunctions of the enforcement function, for example, are detection, apprehension, and arrest of suspected drunk drivers. Subfunctions of the adjudication function include arraignment, conducting the pretrial hearing, and conducting the trial.

The **requirements** of a health/legal system fall into four categories: personnel, equipment, facilities, and procedures. Personnel requirements are expressed in terms of how many people with what training and experience are needed. Requirements for equipment and facilities are stated in terms of the types and amounts of such items as patrol cars, breath-alcohol testing devices, office space, treatment rooms, etc. The funds needed to pay for personnel, equipment, and facilities are also an important requirement. Procedural requirements are defined by narrative descriptions and by charts that describe and depict how and in what sequence functions are performed.

The **outputs** of a health/legal system include, for example, laws and regulations that are produced by legislative bodies and administrative agencies; and reports and other documentation that are developed by police agencies, probation departments, court administrators, and other system organizations.

It is best to build a system description around its functions. The advantage of defining a system functionally, in terms of what it does, is that any proposed changes in what it needs (for example, fewer people) or produces (for example, a new law) can be analyzed with respect to their effects on what the system is trying to accomplish. Conversely, proposed changes in working objectives (for example, to refer more drunk drivers to treatment) can be analyzed to see how the changes might affect requirements or outputs.

The levels of detail needed in a system description are indicated

in Figure 4-1. To describe most functions of a system at the subfunction level, one needs information about personnel, equipment, procedures, and outputs. Information on facilities will usually be necessary only at the top level.

Figure 4-2 illustrates some specific elements of top-level information about the **law generation function** that might be presented in a given jurisdiction. This information falls into the output category as defined above and includes a list of laws and regulations that identify drunk-driving behavior and that have a significant effect on system operations in other functional areas.

In Figure 4-3 some top-level information about the **enforcement and case-finding functions** of a hypothetical jurisdiction is synopsized in tabular form. The information shown falls in the category of requirements. Information about outputs of this enforcement and case-finding function is best presented at the subfunction level.

Top-level information about the **adjudication and sanctions functions** is illustrated in Figure 4-4. The information pertains to the organization of the statewide court system and to the elements of that system that serve a hypothetical jurisdiction. Information about the prosecution segment of the adjudication function is also presented in this figure. A narrative discussion should accompany this and other figures that summarize top-level information, such as the portion given in Figure 4-5.

Figure 4-6 summarizes some important top-level information about the **diagnosis, referral, and treatment functions** of a health/legal system. Again, the dual nature of the jurisdiction's probation organizations should be noted in the narrative accompanying the figure.

Selected information about your jurisdiction's highway transportation system and socio-economic factors should also be included as a part of a top-level description of your health/legal system. Examples of such information for a hypothetical jurisdiction are:

Figure 4-1
Types and Levels of Information Needed
About the Functions of a H/L System

Type of Information	TOP-LEVEL FUNCTIONS							
	Law Generation	Enforcement/ Case-Finding	Adjudi-cation	Sanc-tioning	Diagnosis	Referral	Treatment	
							Super-vision	Perfor-mance
Personnel	None	T,S	T,S	T,S	T,S	T,S	T,S	T
Equipment	None	T,S	T	T	T	T	T	T
Facilities	None	T	T	T	T	T	T	T
Procedures	None	T,S	T,S	T,S	T,S	T,S	T,S	T
Outputs	T	S	S	S	S	S	S	None

Notes: 1. "T" indicates information needed about top-level functions.
2. "S" indicates information needed about subfunctions.
3. Heavy line enclosure indicates the case-disposition functions.

Figure 4-2
Example of Top-Level Information Needed
for Law Generation Function

TYPE OF INFORMATION	CONTENT OF INFORMATION
Laws describing drunk-driving behavior	• Presumptive BAC limit for the offense of driving under the influence of intoxicating liquor (DUIL) is .10% w/v. • Presumptive BAC limit for the offense of driving while ability impaired (DWAI) is .07% w/v. • Liquor sales now permitted to person less than 21 years old. • Drunk and disorderly conduct does not constitute a criminal offense.
Laws and regulations supporting the operation of the enforcement function	• Implied consent law in effect -Type of test: blood, breath, urine, or other -Penalty for refusal: suspension or revocation of driver's license for a period of 90 days to two years. -No law explicitly permitting prearrest breath testing • No law permitting misdemeanor warrantless arrest without police officer presence.
Laws and regulations pertaining to punishments imposed by the sanctions function	• DUIL, first offense -Jail: 0-90 days -Fine: 0-$100 plus costs -Driver license suspension: 1 day-2 years (court ordered); restricted license permitted. -Points: 6 (12 points permitted in 2 years). • DUIL, second offense in 10 years -Jail: 0-1 year -Fine: 0-$100, plus costs -Driver license: same as DUIL first offense. -Points: same as DUIL first offense. • DUIL, third offense in 10 years -A felony • DWAI, first offense -Jail: 0-90 days -Fine: 0-$100 plus costs -Driver license: no suspension -Points: 4 • DWAI, two or more offenses -Jail: 0-1 year -Fine: 0-$100 plus costs -Driver license: could be suspended for two or more alcohol-related driving incidents.
Law and regulations pertaining to diagnosis/referral/treatment functions	• Probation permitted for all drunk driving offenses • Imposition of probation permitted 0-1 year after adjudication • Term of probation -Misdemeanors: 0-2 years -Felonies: 0-5 years • Mandatory reporting by probationer • Fines and driver license suspensions permitted • Treatment authorized as a condition of probation • Probation can be revoked only by the sentencing court • Presentence investigation is discretionary for misdemeanors, mandatory for felonies

Figure 4-3
Example of Top-Level Information Needed
for Enforcement/Case-Finding Function

AGENCY	ANNUAL BUDGET	NUMBER OF OFFICERS	NUMBER OF SHIFTS	CARS PER SHIFT	OFFICERS PER CAR	SPECIAL ALCOHOL PATROLS	CERTIFIED BREATH TEST OPERATORS
SHERIFF'S DEPARTMENT	$4.6 MILLION	71	3 OVERLAPPING	5-15	1 (DAYTIME) 2 (NIGHTTIME)	NONE	8
CITY "A" POLICE DEPARTMENT	$1.5 MILLION	51 (SWORN) 31 (PATROL)	3	3	1 OR 2	NONE	9
STATE POLICE	$1.0 MILLION (EST.)	50 (SWORN) 30-35 (TROOPERS)	3	2-5	1 (DAYTIME) 2 (NIGHTTIME)	SPECIAL TRAFFIC PATROL, BUT NO SPECIAL ALCOHOL PATROL	AT LEAST 2 PER SHIFT--FLUCTUATES BECAUSE OF TRANSFERS
CITY "B" POLICE DEPARTMENT	$4.5 MILLION	108 (SWORN) 79 (PATROL)	5 OVERLAPPING	6-19	1 OR 2	NONE	15

Figure 4-4
Example of Top-Level Information Needed
for Adjudication and Sanctions Functions

Agency/Organization		Location	Personnel	Budget/ Revenue (per year)	Method of Financing	Remarks
Type	Name					
Judicial	Statewide Court System	--	--	--	--	• Unified system with circuit courts (general jurisdiction) • Circuit courts handle third offense DUIL and appeals; district courts handle all other DUIL/DUAI
	22nd Judicial Circuit Court	West City	5 judges	--	--	--
	District Court #1	East City, various smaller towns	4 judges	$540,000/ $750,000	Judges 2/3 state, 1/3 county Staff: all county	Has separate probation department financed by county
	District Court #2	West City	3 judges	$412,000/ $598,000	Same as District Court #1	Has own probation department financed by West City
Prosecutorial	County Prosecutor's Office	West City	18 prosecutors in criminal division	$563,000 budget for criminal division	County	--
	City Attorney's Office	West City	5 prosecutors	$170,000	City	--

Figure 4-5
Example of a Narrative for the Top-Level
Functions of Adjudication and Sanctions

The Statewide Court System

This state has a unified court system consisting of a supreme court, a court of appeals, a court of general jurisdiction known as a circuit court, a probate court, and courts of limited jurisdiction, most of which are termed district courts. All criminal misdemeanors are heard in the courts of limited jurisdiction or district courts. Nearly all drunk-driving offenses are misdemeanors and are heard in district courts. Cases involving DUIL third-offense, the only drunk-driving felony, are heard in circuit courts.

Appeals of convictions for drunk-driving misdemeanors are heard in the circuit court. Since district courts are courts of record, appeals are taken on the record. Appeals of drinking-driving felony convictions are heard by the court of appeals, and once again, the appeal is on the record.

All of the courts are supervised by this state's supreme court, which issues general rules and operating procedures for the lower courts. Judges of all courts must be attorneys.

County Court Operations

The court of general juridsiction in this county is the 22nd Judicial Circuit. The circuit is rarely involved in drunk driving cases (i.e., third-offense DUIL or appeals of misdemeanor convictions).

Far more important to the county health/legal system are the district courts, where DUILs and DWAIs are heard. There are two districts in the county. The 2nd District has three judges whose chambers are located in City Hall. The prosecuting agency for the 2nd District is the City Attorney's Office, which prosecutes all offenses charged under city ordinances. The 2nd District Court Probation Department is an arm of the 2nd District Court and is operated by the West City.

The 1st District encompasses the remainder of the county. There are four judges, two of whom are located in the County Service Center, a building approximately halfway between East City and West City. [The narrative would continue to describe the adjudication and sanctions functions.]

Figure 4-6
Example of Top-Level Information Needed
for Diagnosis, Referral, and Treatment Functions

Agency/Organization		Location	Personnel	Budget/ Revenue (per year)	Method of Financing	Remarks
Type	Name					
Probation	County Probation Department	West City	6 probation officers assigned to district court	$200,000	County	1. Services District Court #1. 2. Performs diagnosis, referral, and supervision.
	2nd District Court Probation Department	West City	5 probation officers (2 perform interviews)	$186,000	West City	1. Services District Court #2. 2. Performs diagnosis, referral and supervision
Treatment	Alcohol Abuse Prevention Program	West City	5 counselors (diagnosis and referral only)	$167,000 (diagnosis and referral only)	County	1. Performs diagnosis and referral for District Court #1 only. 2. Provides education and individual therapy for District Courts #1 and #2.
	County Council on Alcoholism	West City	--	--	--	Provides education and individual therapy.
	Smith Hospital	East City	--	--	--	Provides outpatient group therapy in patient services.
	Jones Clinic	East City	--	--	--	Provides outpatient group therapy and psychiatric services
	2nd District Court	West City	--	--	--	Provides disulfram therapy/outpatient group therapy
	Alcoholics Anonymous	East City West City	--	--	--	Provides outpatient therapy/social services

- Area: 712 square miles
- Population: 234,000
- Median age of population: 23.5 years
- Median family income: $12,294
- Median years of education: 12.6 years
- Number of registered vehicles: 166,000
- Number of licensed drivers: 174,000
- Miles of roadway: 1,745

Information describing attitudes about the alcohol-crash problem on the part of the public and of health/legal system personnel should be presented if available. Such information would best be provided as a part of an overall risk-management program in highway safety that would be concerned with all types of crash risk.

Information needed for describing pertinent subfunctions is of the same general type as the top-level information indicated above, but it will usually be more detailed. The key organizing device for presenting this information is the **functional flow chart**, which shows the sequence in which the subfunctions are performed and indicates the major performing organizations. Accompanying narrative, charts, tables, and graphs may be used for presenting pertinent information about requirements and outputs of each subfunctions.

Figure 4-7 lists the subfunctions of a hypothetical health/legal system that employs probation case-disposition. Not all of the subfunctions are necessarily performed for a given drunk-driving case. The conditions under which these subfunctions are performed and their sequence are best indicated by a functional flow diagram. Figures 4-8 through 4-10 illustrate a flow diagram involving the subfunctions listed in Figure 4-7. The symbol Ⓞ means that **either** of the subfunctions immediately following the symbol is performed in a given drunk-driving case, depending on the circumstances. The symbol A is used to show that **all** of the subfunctions immediately following the symbol are performed. The symbol G next to an arrow stands for "go" and indicates the processing path when the

Figure 4-7
Examples of Subfunctions of a H/L System

Function	Subfunctions
Enforcement	Detect and Apprehend Drunk Driver; Arrest Driver; Transport Driver to Station; Verify Arrest; Give Breath-Alcohol Test; Notify Driver License Agency of Refusal to Take Test; Release Driver Uncharged; Release Driver on Own Recognizance; Process Arrest Bond.
Adjudication	Authorize Complaint and Warrant; Conduct Arraignment; Conduct Pretrial Hearing; Adjudicate Implied Consent and Charge; Conduct Trial.
Sanctions	Set Sentencing Date; Impose Punitive Sanctions; Impose Probation/Punitive Sanctions; Suspend or Restrict License; Impose Presentence Probation; File Petition for Termination of Probation: Terminate Probation; Request, Order, and Conduct Show Cause Hearing; Process Bench Warrant for Violation of Probation; Reinstate Probation; Impose Original Sentence; Terminate Obligation to Court; Impose Sentence for DUIL/DWAI.
Diagnosis, Referral, and Supervision	Conduct Presentence Investigation; Perform Further Diagnosis; Conduct Driver Interview; Prepare and Present Presentence Report; Refer to Treatment; Provide Treatment; Supervise Treatment

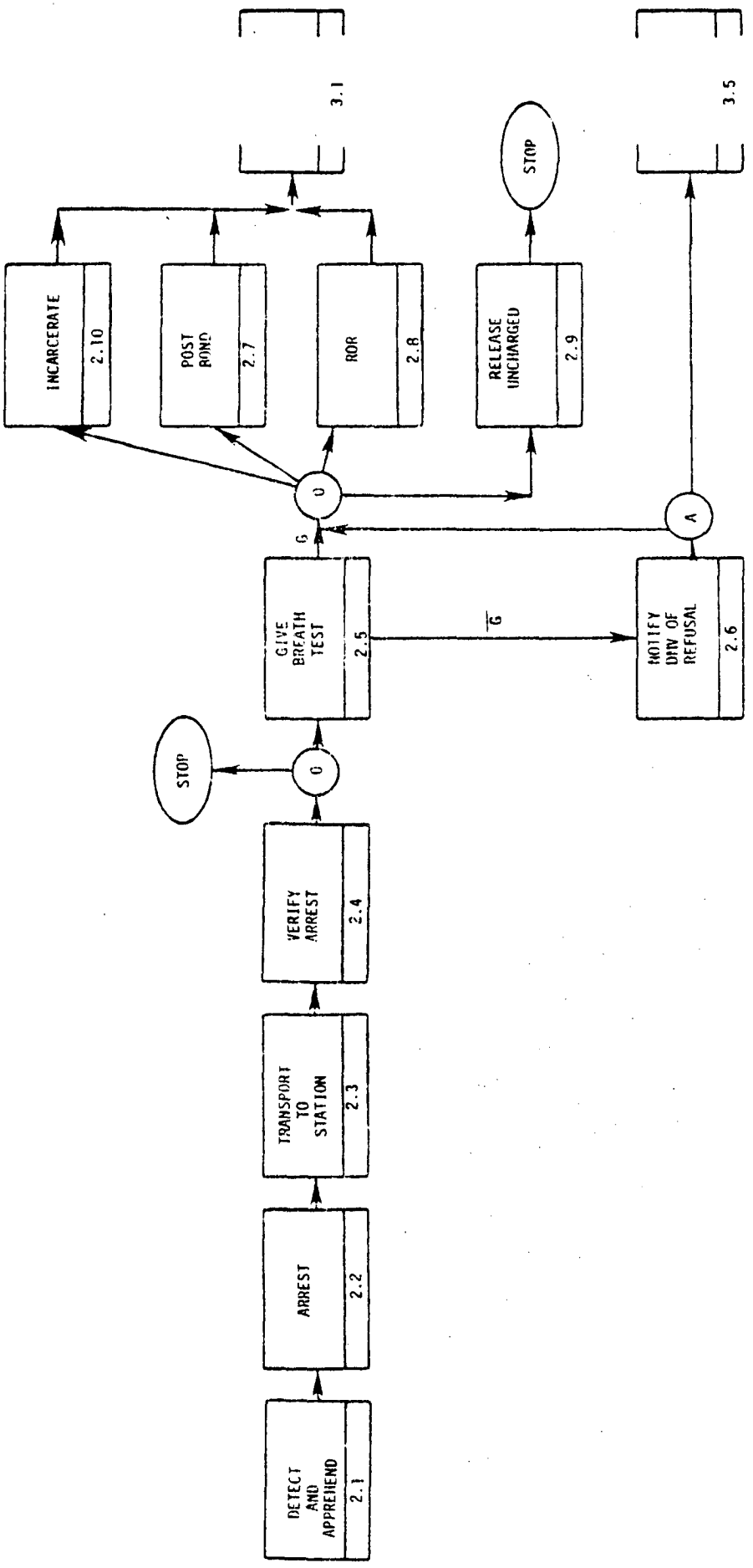


Figure 4-8
Example of a Functional Flow Chart
for the Enforcement Function

Figure 4-9
Example of a Functional Flow Chart
for the Adjudication Function

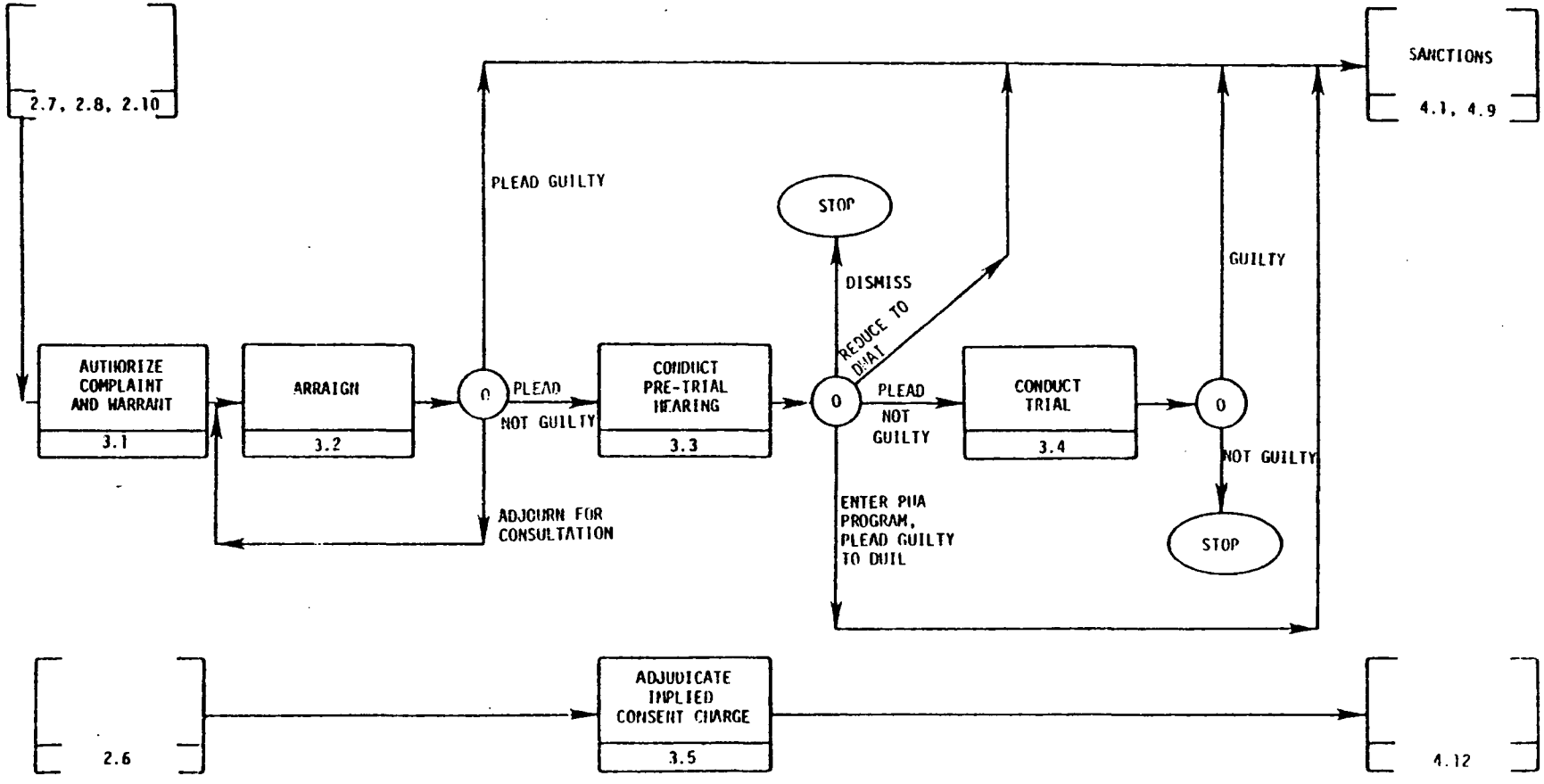


Figure 4-10
Example of a Functional Flow Chart
for the Sanction, Diagnosis, Referral, and Treatment Functions

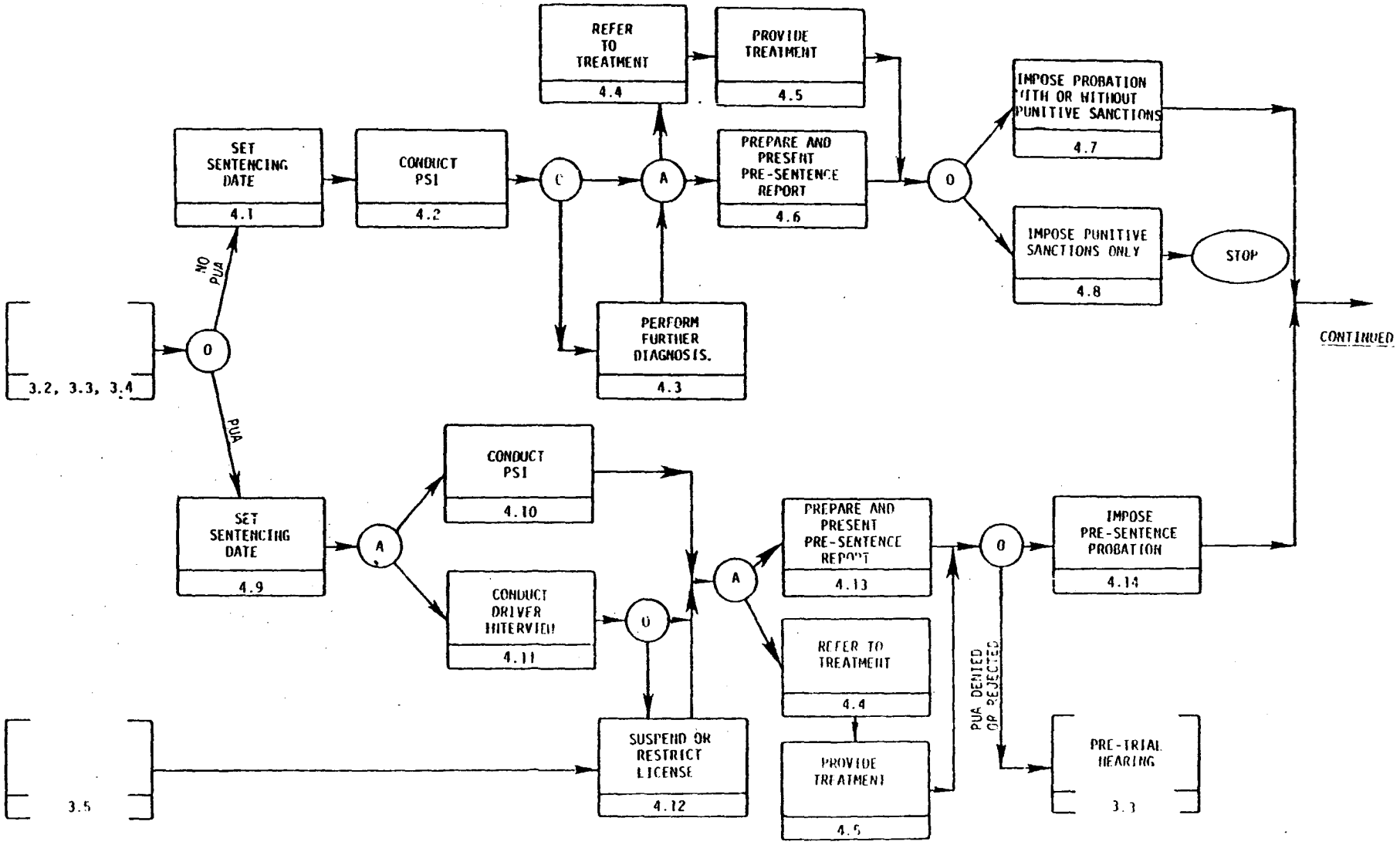
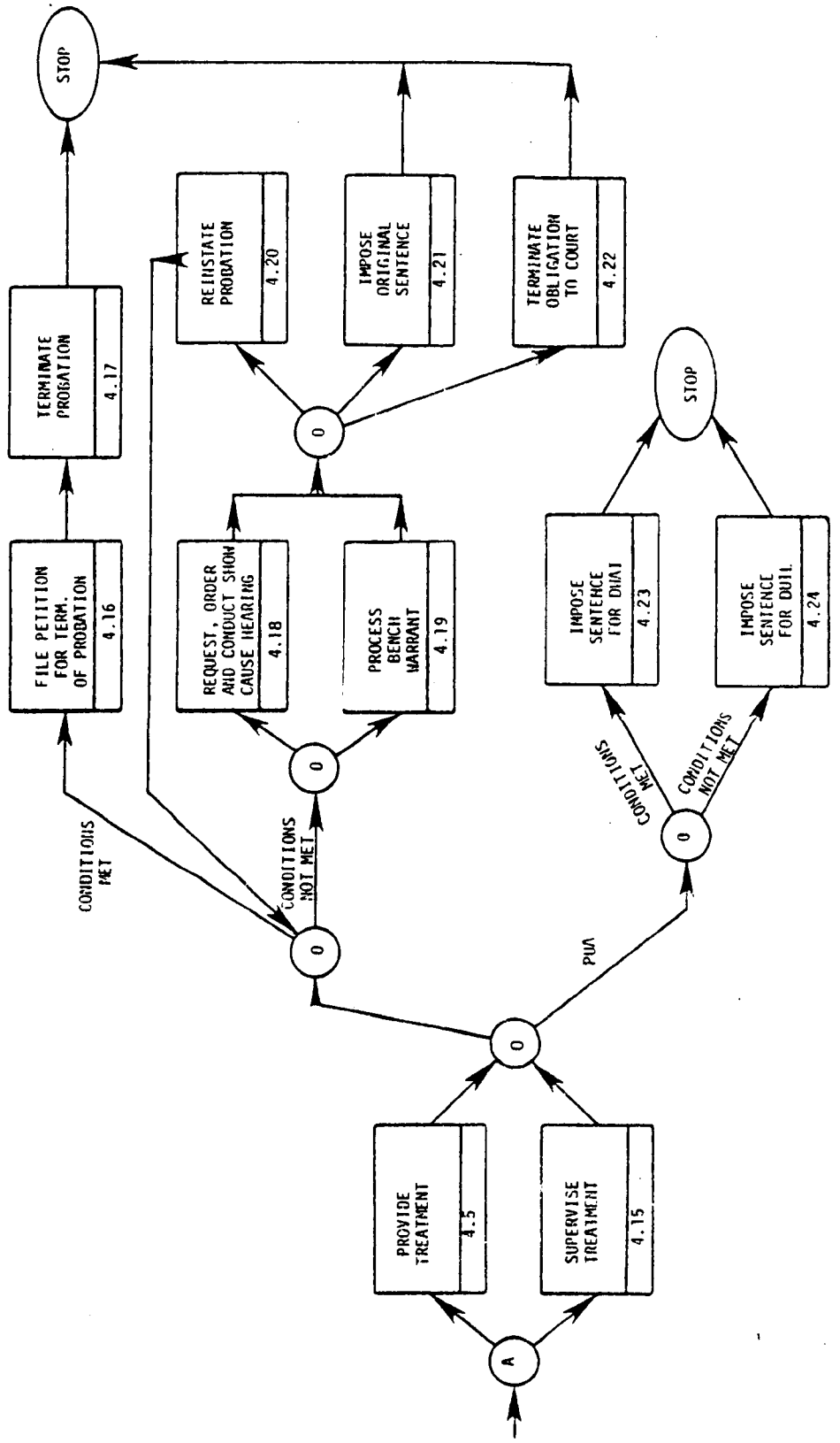


Figure 4-10 (continued)



subfunction immediately preceding that symbol is performed as required. The symbol $\bar{G}$ stands for "no-go" and indicates the processing path when a function is not performed as required.

A narrative description should accompany the flow diagram and should indicate reasons for flow directions. Figure 4-11 contains a portion of a narrative description for the adjudication flow diagram depicted in Figure 4-9.

Information about the requirements and outputs of subfunctions should be provided where appropriate (see Figure 4-1). For example, personnel, procedures, and output information is needed for each subfunction of the **diagnosis and referral function.** In the case of subfunction 4.2, Conduct Presentence Investigation (Figure 4-10), this translates into the following:

- Performing organization
- Training and experience required to conduct a presentence investigation (PSI)
- Procedures used in conducting a PSI
- Forms and other "software" used in a PSI
- Average amount of time required to conduct a PSI
- Amount of elapsed time between the preceding function and the following function for a typical case
- Number of PSIs conducted per year
- Average cost of a PSI

A form should be developed for presenting detailed information about subfunctions. An example of such a form and the information contained in it is shown in Figure 4-12 for a hypothetical jurisdiction.

Note that the descriptive data outlined above are useful for day-to-day management of the system as well as for planning and evaluation (Poliskey 1979). It will help system agencies (for example, a probation department) answer such questions as: is the department being administered properly? What is the quality of case-work management? What are the qualifications of probation officers? What types of inservice training are offered?

Figure 4-11
Example of a Narrative Description of the Adjudication Function of a H/L System

The first step in the adjudication process in the 2nd District is the charging procedure, termed the authorization of complaint and warrant. Done by a city attorney in West City, the authorization is essentially a filtering process for ensuring that the elements of the "crime" are present. The authorization of the complaint and warrant is performed on the first business day after the arrest and typically takes about fifteen minutes.

Immediately following authorization, the defendant appears in court for arraignment before a district judge. The defendant is informed of the charges against him and is given an opportunity to plead guilty or not guilty. If the defendant wants time to consult an attorney, the arraignment may be adjourned to allow consultation. If the defendant pleads guilty, he is referred to the probation department for an interview (discussed later under "sanctioning"), or if he pleads not guilty, a pretrial hearing is set.

At the pretrial hearing the prosecutor has an opportunity to decide which cases he is going to try. Because there are many more people charged with DUIL in West City than could reasonable be tried, most cases are dealt with at this stage by plea bargaining. Also, since the penalties for a DUIL are severe, there is great pressure on the city attorney to reduce the charges by a plea bargain. The city attorney's decision as to which cases to plea bargain and which cases to take to trial is a subjective one, taking into account the following factors in order of importance:

- previous driving record, including any prior drunk-driving convictions,
- blood alcohol concentration,
- whether an accident occurred,
- general evaluation of the case in terms of evidence, and
- defendant's attitude.

In general, the prosecutor is more likely to bargain in a case in which the evidence is weak or one involving a driver with an acceptable driving record or with a lower breath test result. Any plea bargaining is usually accomplished at the pretrial hearing, held approximately three weeks after arraignment. But since the defense attorney and the city attorney are able to meet before the pretrial hearing, plea bargaining will in fact occur before the hearing.

There are two possible results of a plea bargain for a DUIL. First, the city attorney might reduce the charge to DWAI, a less serious offense. The defendant then agrees to plead guilty to the reduced charge and the adjudication process is completed. An immediate reduction to DWAI is generally offered to defendants with no prior record and/or "low" BACs (i.e., less than .15% w/v). Second, the city attorney might grant the "Plea Under Advisement" program. Any defendant allowed this program pleads guilty to the original charge of DUIL with the agreement that the charge will be reduced to DWAI upon completion of any requirements set forth by the probation department or the Department of Motor Vehicles. [The narrative would continue to describe the adjudication function.]

Figure 4-12
Example of Information Needed
to Describe a Presentence Investigation Subfunction

Performing Organization

- Probation department performs all alcohol-related presentence investigations (PSI).
- Two probation officers perform alcohol-related PSIs exclusively.
- Probation officer who performs PSI almost always performs supervision.

Training and Experience Required to Conduct Alcohol Related PSI

- Understanding of alcohol abuse and familiarity with its system. Experience can be academic, clinical, or practical.
- B.A. in social sciences, however this requirement may be relaxed for individuals with significant experience in the field of alcohol abuse.

Procedures Used in Conducting PSI

- After conviction, defendant ordered to report to probation department for interview.
- At interview, probation officer obtains information concerning present and previous arrests and discusses effect of alcohol on defendant's life in general.
- Probation officer refers defendant to an appropriate alcohol treatment modality.
- Presentence report prepared by probation officer with recommendations for appropriate treatment and given to judge at sentencing.
- Remarks--the information obtained in the interview may be supplemented by contacts with friends, relatives, or social service or criminal agencies.

Forms and Other "Software" Used in PSI

- Presentence report prepared after every PSI.
- Documentation used in the preparation of the PSI:
  - state and FBI arrest histories and state traffic record
  - reports from doctors and social service agencies
- Referral form presented by defendant to treatment agency after referral.
- Remarks--most PSIs contain the following information: driver record, criminal record (if any), family background, marital history, occupation, education, health, financial situation, and description of the present offense. Attention is paid to details that indicate the defendant's drinking patterns.

Average Amount of Time to Conduct PSI

- The presentence interview takes between forty-five and ninety minutes.
- Other contacts made in addition to the interview may take up to several days.
- The presentence report takes from thirty minutes to an hour to prepare.

Amount of Elapsed Time Between Conviction and Sentencing for a Typical Case

- The typical presentence period is four to five weeks.
- For PSIs that the judges know will take longer than four to five weeks (i.e., defendants participating in the Plea Under Advisement Program) a six to eight week period is allotted.
- For out-of-town and out-of-state defendants (and other limited instances) the PSI and sentencing will occur the same day as convicted.

Number of Alcohol-Related PSIs Conducted Per Year

- Approximately 500 alcohol-related in 1977.
- Approximately sixty percent or 300 were for DUIL or Impaired Driving.

Average Cost of a PSI

- Thirty dollars for a typical probation interview and preparation of a presentence report (includes two hours of a probation officer's time plus supplies, support staff, and overhead).
- Remarks--if further interviews or contacts by either the probation officer, doctors, or a social service agency are necessary, the cost will increase.

A final consideration in describing a health/legal system is how it evolved to its present state. You need to understand the factors that influenced the selection of objectives and methods of the present system to make valid decisions about the objectives and methods of a future system. Knowing more about the system's history will also be useful in deciding how to change the present system.

Figure 4-13 illustrates a summary presentation of information about the evolution of a health/legal system. Again, the key elements of this description should be discussed in narrative form (see Figure 4-14 for an example).

Acquiring the Information

It is highly unlikely that all or even a large part of the information described in the preceding section will have been collected in most jurisdictions. When such information does exist it will probably not be in a form suitable for analysis. Thus, some effort will be required for collecting, collating, and presenting information about the nature and operating environment of your system.

The method we recommend for collecting such information is a survey of system operations. The task is approached as a case study and involves the efforts of two or three professionals who have good general knowledge about the operation of the overall system and specialized knowledge about operations in one or more functional areas (for example, the probation department). It is important that at least one member of the survey team be trained in the law. The team must be able to interact well with all levels of personnel from all of the functional areas of the system.

Key personnel from these functional areas should be contacted by the survey team. Contacts should include such individuals as:

- a judge of the court handling most of your drunk-driving cases;
- a prosecutor who understands how drunk-driving cases are handled;
- an attorney who is an experienced defense counsel in

Figure 4-13
Example of Summary Presentation of System Evolution Information

FUNCTION	SIGNIFICANT EVENTS		
	Pre-ASAP (1960-1970)	ASAP (1971-1974)	Post-ASAP (1975-Present)
LAW GENERATION	• Implied Consent, 1967 • Two-Tier Drunk Driving Offense (DUIL,DWAI), 1967	• Argersinger Decision • No New Major Legislation	• Lowered Legal Drinking Age • Drunk/Disorderly Decriminalized • Court-Determined Driver License Action
ENFORCEMENT	• No Special Emphasis On Drunk Driving	• Special Two-Man Patrols In Sheriff's Department • DUIL Arrests Double • Increased Training And Awareness Of Drunk Driving Problem	• Special Patrols Cease • DUIL Arrests Decrease (but not to Pre-ASAP level)
ADJUDICATION	• Moderate Case Loads • Moderate Plea Bargaining	• Increase In Case Loads • Better Testimony By Police • Increase In Plea Bargaining	• Case Loads Decrease • Plea Bargains Remain Stable • Plea Under Advisement Program Starts • Driver Improvement Program Starts
SANCTIONING, DIAGNOSIS, REFERRAL, AND TREATMENT	• Punitive Sanctions Same As Now • 2nd District Court Probation Dept. Established • Antabuse Program Established For 2nd District • Diagnosis/Referral Low To Moderate. Concentrates On Alcoholics. • Treatment Options Limited	• Punitive Sanctions Same As Now • More Treatment Options • ASAP Funded Probation Officers & Counselors • Large Increase In Diagnosis/Referrals (Near 100% In District) • More Formalized And Sophisticated Diagnosis/ Referral Procedures	• Percentage Of Diagnoses/Referrals Remain CONSTANT • 2nd District: Diagnosis/Referral Procedure Remains The Same; Probation Officers & Counselors Funded By West City • 1st District: Diagnosis/Referral Task Split Between Probation Dept. And AAPP; County Provides Funding • Treatment Options Remain The Same

Note: ASAP = Alcohol Safety Action Project
AAPP = Alcohol Abuse Prevention Program
DUIL = Driving Under the Influence of Liquor
DWAI = Driving While Ability Impaired

Figure 4-14
Example of a Narrative Description of the Evolution of a H/L System

Before 1967, River County used only the legal component of the health/legal approach to deal with the alcohol-crash problem. When a drunk driver was arrested and convicted, he was fined and/or jailed. After 1967 a series of events took place that led to the establishment of a full-scale health component. These events are described below with respect to the three time-periods in which they occurred:

- Pre-Alcohol Safety Action Project (ASAP) (1967-70)
- ASAP (1970-73), and
- Post-ASAP (1973-present)

Each time period is discussed in relation to the primary functions of a health/legal system: enforcement, adjudication, sanctioning, diagnosis, referral, and treatment. The law generation function is discussed in terms of the effects of its statutes and regulations on the other functions. Within each function, discussion centers on the activities of key individuals and agencies.

Pre ASAP (1967-70)

Several developments in this period had a significant effect in shaping the county's present program for drunk drivers. These developments and the setting in which they occurred are discussed below.

Enforcement

An effective mechanism for arresting (and later convicting) drunk drivers began to evolve in 1967, when the state's implied consent statute came into force. As a result, a driver suspected of being under the influence of alcohol was forced to choose between taking a test for blood-alcohol concentration or losing his driver's license. Since most chose to take the blood-alcohol test, an effective means to prosecute drunk drivers became available, and just as important, police officers became more interested in arresting drunk drivers because of the increased likelihood of obtaining conviction.

Adjudication

The adjudication process in this period was not appreciably different from the present process. The implied consent legislation made convictions for DUIL more likely. In 1966 an impaired driving law was passed. The law created two levels of drunk-driving offenses, Driving Under the Influence of Liquor (DUIL) and Driving While Ability Impaired (DWAI). This law made prosecutors more willing to reduce DUIL to DWAI on a plea bargain, and juries were more likely to convict a defendant of one of the two offenses.

Sanctioning

The statutory punishment for DUIL and DWAI have not changed since the pre-ASAP period.

Diagnosis/Referral - 2nd District

The first attempt to create a court referral program in the county occurred in the 2nd District Court. Initially, only individuals believed to be alcoholics were referred to treatment, usually to Alcoholics Anonymous. In 1969 a more organized diagnosis and referral program was begun. The program was started by a district court judge and a local physician and provided chemical therapy (disulfram) and counseling for selected offenders. [The description would continue.]

drunk-driving cases;

- a person from an agency (for example, a probation department) that diagnoses, refers, and supervises treatment of drunk-driving cases;
- a person from an agency that conducts treatment and rehabilitation programs for clients referred by the court;
- a person from the driver licensing agency;
- a person who coordinates or evaluates health/legal system activities; and
- a law enforcement official.

In nearly every jurisdiction with active health/legal systems, a single individual or organization has played a leading role in the adoption of the health/legal approach. Often, this individual or organization will still be active in system operations, and every effort should be made to identify and contact this key person or group.

The information you seek should be obtained through informal, conversational interviews. A formal questionnaire will not be needed, but a list of topics and items of information relevant to each functional area should be prepared as a guide for the discussion with each agency. Examples of discussion guides for the agencies that are typically involved in probation case-disposition are provided in Appendix B. Topics that pertain to the evolution of such a system are also listed, and should be discussed with persons from all of the agencies.

Objective statistical data will not always be available in the forms needed or, in some instances, in any form. Special "side studies" are required in jurisdictions that have data in an unusable form. For example, some agencies keep very detailed records on individual cases, but the data in the records have never been aggregated across all cases. While "raw material" for the system is available, considerable effort might be necessary to convert it into useful information.

When raw data are not available or are of questionable validity, it will be necessary to set up new procedures for collecting this data. Because developing and implementing data collection can be very time-consuming (it might be years before data would be available), subjective estimates may have to suffice initially. Subjective data are obtained by asking interviewers to provide their best estimate of an item, for example, the percentage of convicted drunk drivers who entered treatment programs in a recent year. The estimated percentage could be combined with objective data on convictions to obtain a first approximation of the total number of convicted drunk drivers who enter treatment in a year.

DESCRIBING THE PERFORMANCE OF YOUR HEALTH/LEGAL SYSTEM

The performance of a health/legal system as a whole can be determined by analyzing the system's performance in relation to its individual functional objectives and its operating constraints. The major input to such an analysis is a detailed functional description of the type described above. This section identifies the specific information that is needed for a performance analysis of a health/legal system and describes how such information can be acquired and used in the analysis.

Information Needed

The primary functional objectives of health/legal systems were identified in Section 3.8, and corresponding performance measures and indicators were listed. A set of constraints on system operations was also specified. We were forced to use qualitative indicators in analyzing how the performance of different types of case-disposition processes related to these objectives and constraints because a lack of data prevented our measuring their performance quantitatively. You should be able to get a better quantitative assessment of your system's performance if you have completed a functional description of the type described above. However, the quantitative analysis will have to be supplemented with qualitative and subjective information.

Figure 4-15 summarizes some useful quantitative performance measures. To calculate the value of **number of arrests per violation** you will need both the number of drunk-driving arrests and the number of drunk-driving violations in the most recent period for which data are available. The numerator in the ratio **number of diagnoses per arrest** is the number of arrested drunk drivers who have been the subject of a methodical analysis to determine whether they did in fact commit the offense for which they were arrested and, if so, to ascertain the nature of the drinking-driving problem behind that offense. The numerator of the ratio **number of favorable outcomes per diagnosis** is the number of diagnosed drunk drivers who actually received the combination of punishment and treatment that was determined to be best for them by the diagnosis.

The latter two performance measures can be enhanced by providing judgmental information about the validity of the decisions made in adjudicating, diagnosing, referring, and treating arrested drunk drivers. Such information is of the type discussed in Section 3.8, that is, pertinent information about resources, procedures, attitudes, and information.

The information needed for the constraint performance measures (i.e., cost and time) is self-explanatory. Note, though, that the ***time*** measures are stated in terms of elapsed time rather than just the time time required to perform all pertinent functions. Time between functions must also be counted.

Acquiring the Information

Number of arrests, number of diagnoses, and number of favorable outcomes can be determined directly from the data sheets for pertinent subfunctions. Number of violations will have to be estimated from roadside survey data or (less preferably) from ratios based on national data. In the calculations a violation is defined as a trip driven while drunk. If your roadside survey determines that, say, four percent of all trips are driven by drunk drivers (i.e., driver's BAC of .10% w/v or more), you can calculate a first

Figure 4-15
Useful Quantitative Measures of Performance

FUNCTIONAL OBJECTIVE OR CONSTRAINT	PERFORMANCE MEASURE
Enforce Laws/Find Cases	Number of Arrests Per Violation
Adjudicate/Diagnose	Number of Diagnoses Per Arrest
Sanction/Refer/Treat	Number of Favorable Outcomes Per Diagnosis
Reasonable Cost	Cost Per Case
Reasonable Time	1. Time To Complete Total Process 2. Time Between Arrest and Completion of Adjudication 3. Time Between Arrest and Entry Into Treatment. 4. Other As Needed

estimate of number of violations per year by multiplying four percent times your number of licensed drivers times the average number of trips each licensed driver makes per year. Your state Governor's Highway Safety Representative should be contacted to obtain trip estimates for your jurisdiction, and your state's DMV should have data on the number of licensed drivers.

Cost and time data can also be obtained from the subfunction data sheets. Again, the data will have to be summed over all pertinent subfunctions to provide values for the cost and time measures in which you are interested. Both gross and net cost will be of concern, so it will be necessary to include revenue estimates. An example of a summary presentation of cost data for a hypothetical jurisdiction is shown in Figure 4-16. Summary time data for the same jurisdiction are shown in Figure 4-17.

SYSTEM CLASSIFICATION

The functional description makes it an easy matter to classify a system in terms of the attributes identified in Chapter 3. Process classification follows directly from the functional flow chart. Other attributes can be determined from the narrative accompanying the flow charts and from the data sheets for each subfunction. The following specific attributes are especially important:

- type of case-disposition process,
- types of offenders handled,
- statutes and regulations proscribing drunk-driving behavior and supporting system operations,
- performers of health/legal functions,
- information needed for case-disposition functions,
- method of financing operations,
- types of treatment alternatives used, and
- attitudes about system operations.

This information will enable you to compare your system to the systems in Chapter 3 and to systems that have been described in other studies.

Figure 4-16
Example of Summary Presentation of Cost Data

Item	1st District	2nd District	Both Districts
Cost of Operations	$111,000	$161,000	$272,000
Revenue*	$ 42,000	$ 73,000	$115,000
Net Cost**	$ 69,000	$88,000	$157,000
Net Cost*** Per Client	$ 197	$ 176	$ 185

*From Fines, Court Costs, and Treatment Fees

**Financed From Tax Base

Figure 4-17
Example of Estimated Elapsed Time
to Complete Selected Functions

FUNCTION	1st District		2nd District	
	Traditional Probation	Driver Improvement	Traditional Probation	Reduced Charge
Enforcement/Case Finding				
Detect→Breath Test	1-2 Hrs.	1-2 Hrs.	1 1/2 Hr.	1 1/2 Hr.
Breath Test→Release	1/2-1 Hr.	1/2-1 Hr.	1/2-1 Hr.	1/2-1 Hr.
TOTAL	2-3 Hrs.	2-3 Hrs.	2-2 1/2 Hrs.	2-2 1/2 Hrs.
Adjudication				
Release→Arraign	1 Day-1 Week	1 Day-1 Week	1 Day-1 Week	1 Day-1 Week
Arraign→Pretrial	4 Weeks	4 Weeks	4 Weeks	4 Weeks
Pretrial→Trial	4-8 Wks.	None	4-8 Wks.	None
TOTAL	8-13 Wks.	4-5 Wks.	8-13 Wks.	4-5 Wks.
Sanctions/Diagnosis/ Referral/Treatment				
Trial→PSI	2 Weeks	2 Weeks	2 Weeks	2 Weeks
PSI→Treatment	3 Weeks	4-6 Weeks	1 Week	1 Week
Treatment→Release	6 Months-1 Year	6 Months-1 Year	9 Months-1 Year	6 Months
TOTAL	31-57 Wks.	32-60 Wks.	42-55 Wks.	29 Weeks
ALL	39-70 Wks.	36-65 Wks.	50-68 Wks.	33-34 Wks.

SUMMARY

A good system description is an essential prerequisite to a methodical program of change for health/legal systems. Such a description provides a baseline for designing and evaluating system improvements. It should contain three basic elements.

The first element deals with a jurisdiction's **drinking-driving problem.** Information about drinking drivers who were involved in highway crashes and information about the role of alcohol in causing such crashes are needed for their description.

The second element is concerned with the **operation and environment** of the system. A functional approach is best suited for developing and presenting such a description. In essence, this approach breaks down the functions of a system into more specific subfunctions, which are then described in terms of their needs and their products. Historical factors influencing how the system evolved to its present state are also described.

System **performance** is the third and final element of the description. In the sense used here, performance means the ability of a system to accomplish its functional objectives and to operate within the limits imposed by fundamental constraints. Top-level functional objectives are to enforce laws/find cases, adjudicate, diagnose, refer, sanction, and treat drunk drivers. Processing time and cost are the two top-level constraints that can be measured quantitatively, but fairness and attitudinal constraints are also important and should be considered, at least subjectively, in a system description.

Sources of information needed for the system description are varied. Problem definition information can best be developed from accident investigation studies and roadside surveys; however, police accident reports and driver records, supplemented by information from other studies, may have to suffice in some jurisdictions.

A survey of system agencies is required for providing information about a system's operations, environment, and performance. Such a

survey should be conducted by the staff from a system's agencies, for example, the probation department or the prosecutor's office. Information should be obtained through informal personal interviews using collection guides rather than formal questionnaires. Special "side studies" may be needed to develop useful and reliable quantitative measures in some areas, for example, the number of convicted drunk drivers who received various kinds of treatment in a given year.

We note that the full system-description procedure presented in this chapter can require considerable resources to implement. Some jurisdictions may not possess such resources and will have to bypass some of the steps. Nevertheless, we recommend that all jurisdictions take the time to develop and maintain at least a top-level description of their system. The usefulness of this device in planning and coordinating system operations will far outweigh its cost.

The system description will be useful for comparing a given jurisdiction's system with systems in other jurisdictions and for learning from the experience of jurisdictions with similar systems and problems. How to use a system description in designing new or improved health/legal systems is treated in detail in the next chapter.

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5

Designing and Planning Changes to Health/Legal Systems

Health/legal system design is best viewed within the context of change. Whether you are designing a new system or improving the one you already have, you will be concerned with determining what changes should be made in the present approach to your alcohol-crash problem. This section presents a method for making this determination. The method is rooted in the risk-management framework described in Chapter 2 and involves three areas of analysis:

- identification of problems and causes of problems in your present system,
- development of alternate strategies for solving these problems, and
- selection of a preferred strategy for detailed design and implementation.

In the presentation of this method, illustrative examples suggested by our case studies and the literature will play an important role. This will preclude the abstractions and the many additional pages that would be needed to describe a general theory of health/legal system design. While the examples are fictitious, the problems and solutions they illustrate have occurred in real-world systems. Appendix A contains detailed information about real systems studied in this project. Case studies sponsored by NHTSA under a previous contract (Palmer et al. 1976) also contain information about problems in operating health/legal systems.

IDENTIFYING SYSTEM PROBLEMS AND THEIR CAUSES

System changes are made to improve a system's performance in achieving its functional objectives and accomodating its constraints. We use the term "problem" to indicate the existence of such a need.

As was discussed in Chapters 3 and 4, **measurements** of performance include number of drunk driving arrests per drunk driving violation, number of correct diagnoses per arrest, and number of correct sanction choices per diagnosis. Performance **indicators** include the resources, procedures, attitudes, and information that are used in the various functional areas.

Unfortunately, no sure-fire formula can be given for determining when a given component's level of performance is high enough. As noted elsewhere in this manual, research has not been able to tell what percentage of drunk drivers must be arrested, diagnosed, punished, and treated in order to achieve a satisfactory level of performance. NHTSA's Alcohol Safety Action Projects (ASAPs) achieved drunk driving arrest rates as high as 3.5 percent of licensed drivers per year, but no correlation was found between arrest rate and the incidence of drunk driving. Many ASAPs and other jurisdictions have achieved a high rate of diagnosis, referral, and treatment (in some cases, more than 90 percent of those arrested), but the resulting effect on drunk driving is not known (U.S. Department of Transportation 1975a).

Thus, at this time, only general, mostly qualitative criteria can be given for assessing performance. These criteria were developed from the discussion in Chapter 3, and are summarized in Figure 5-1. Problems may occur in a health/legal system when any of the criteria are not met.

Problems in a health/legal system are highly interconnected and may not be obvious. Thus, analysis requires a systematic approach. The functional analysis technique used in Chapter 4 for developing a system description provides such an approach. Its use in problem analysis involves the following steps:

1. Examine each system function and subfunction to identify performance deficiencies (i.e., problems).
2. Trace each problem backward through the system to determine its origin and forward to determine its effects. This will result in the identification of

Figure 5-1
Qualitative Performance Criteria for Health/Legal Systems

FUNCTIONAL AREA			
ALL	ENFORCEMENT/ CASE FINDING	ADJUDICATION/ DIAGNOSIS	SANCTIONING/REFERRAL/ TREATMENT
• Favorable attitudes - understanding of drunk driving - supportive of philosophy and procedures used to deal with that problem - belief that dispositions of cases are appropriate - belief that other components are acting properly and effectively • Sufficient resources to support all aspects of system operations • Sufficient number of qualified personnel • System processing accomplished in a reasonable amount of time • System procedures fair and humane	• Effective procedures for apprehending target group of drivers • Simple and clear arrest procedures • Processing accomplished quickly (two hours or less) • Reasonable requirements for supporting other functions (collecting information, appearing in court, etc.) • Produces accurate and timely reports and data • Uniformity in procedures used and data collected	• Provides acceptable inducements for participation in treatment • Requires deliberate, accurate diagnosis of drinking driving problems of defendants • Low percentage of trials and appeals • Provides opportunity for all members of target group to participate in health/legal program • Driver records of prior offenses are available • Information on the accused violation is available • Accurate diagnostic methods developed for use in sanctioning and referral • Few dismissals and continuances because of procedural problems	• Wide range of sanction alternatives • Good working relations with treatment agencies • Ability and willingness to impose indicated sanctions • Case-disposition procedure allows early intervention • Specific supervision requirements • Written supervision reports are prepared • Provisions for both formal and informal actions against defendants who do not comply with treatment requirements • Use of diagnostic reports in sanctioning/referral • Reports case-disposition information to statewide driver record system; information is: - accurate - complete - timely - uniform - sufficient for use by diagnostic staff in identifying prior drunk-driving incidents

interconnected sets or "chains" of problems.

3. Set aside for further action those problem chains that have, in your judgment, a serious effect on system performance.

Several examples of problem-chain analysis in four hypothetical health/legal systems are presented step-by-step below. The examples have a common theme: The problems cited all affect a system's ability to deal appropriately with multiple drunk-driving offenders. They thus illustrate how different types of processes in different jurisdictions can experience different "failures" that have a common ultimate effect on system performance.

Loss of Information in a Reduced-Charge Process

This problem chain first surfaced during a routine analysis of the treatment facilities serving Lakeview, a bedroom community adjoining a large urban center in the midwest. It was found that the number of drunk drivers being referred to more "intensive" treatment modes (such as individual therapy and inpatient treatment) had steadily dropped since Lakeview had dropped its probation case-disposition process and adopted the earned-charge-reduction approach. Checking backward through the system, analysts found no reluctance on the part of alcohol counselors to recommend these treatment modes when diagnosis indicated they were needed. Nor was there any hesitancy among prosecutors, judges, and defendants to accept the recommendations of the counselors. The counselors themselves were found to be well trained and using accepted procedures to produce diagnostic reports of high quality.

Examination of roadside survey data showed no significant change in the blood alcohol concentration (BAC) distribution of drivers on the road. Likewise, the limited BAC information that was available for fatally injured drivers suggested no sudden shift toward lower BAC drivers. Thus, there was no apparent reduction in drivers who needed treatment.

The analysts pursued the problem into enforcement, thinking that

procedures there might have changed so as to reduce the percentage of drivers with high BACs. No such changes were noted and police officials were generally surprised that such a problem existed. They performed a quick analysis of their BAC test results and found that, if anything, the BAC distribution of drivers arrested for drunk driving had shifted toward slightly higher values.

Becoming somewhat perplexed, the analysts returned to the agency that was coordinating the treatment program. This time they decided to do an in-depth study to see what other characteristics of referred patients had changed along with their drinking-driving habits. As it turned out, no such study was necessary. On their first reading of the data, the analysts found that the patients in the intensive treatment group were now nearly all residents of Lakeview. By contrast, only about half of the group had been Lakeview residents before the changeover to earned charge reduction.

In looking for explanations for this finding, one analyst recalled from the functional description that the number of prior alcohol-related driving offenses had been used as a major identifier of drinking-drivers. Under the new case-disposition process, drunk driving was being reduced to reckless driving, so that there was no DMV record of prior drunk driving offenses for drivers who had accepted the Lakeview program. However, the Lakeview prosecutor's office kept a separate file of case records for Lakeview residents on the presumption that most nonresidents would not be repeat offenders in Lakeview anyway. The prosecutor's records were annotated to indicate the original charge. Thus, when alcohol counselors checked driver records at the DMV and the prosecutor's office, only multiple offenders who were Lakeview residents would be identified.

Having traced the original problem to its root cause and identified several derivative problems along the way, the analysts considered some possible additional, "secondary" impacts, namely:

- loss of public and system (e.g., enforcement) support because of failure to deal appropriately with high-risk drivers;

- loss of confidence in information available for choosing sanctions; and
- waste of system resources because of repeated referrals of multiple offenders to treatments designed for first offenders.

The primary problem chain for this example is diagrammed in Figure 5-2.

Loss of Inducement for Treatment in a Probation Process

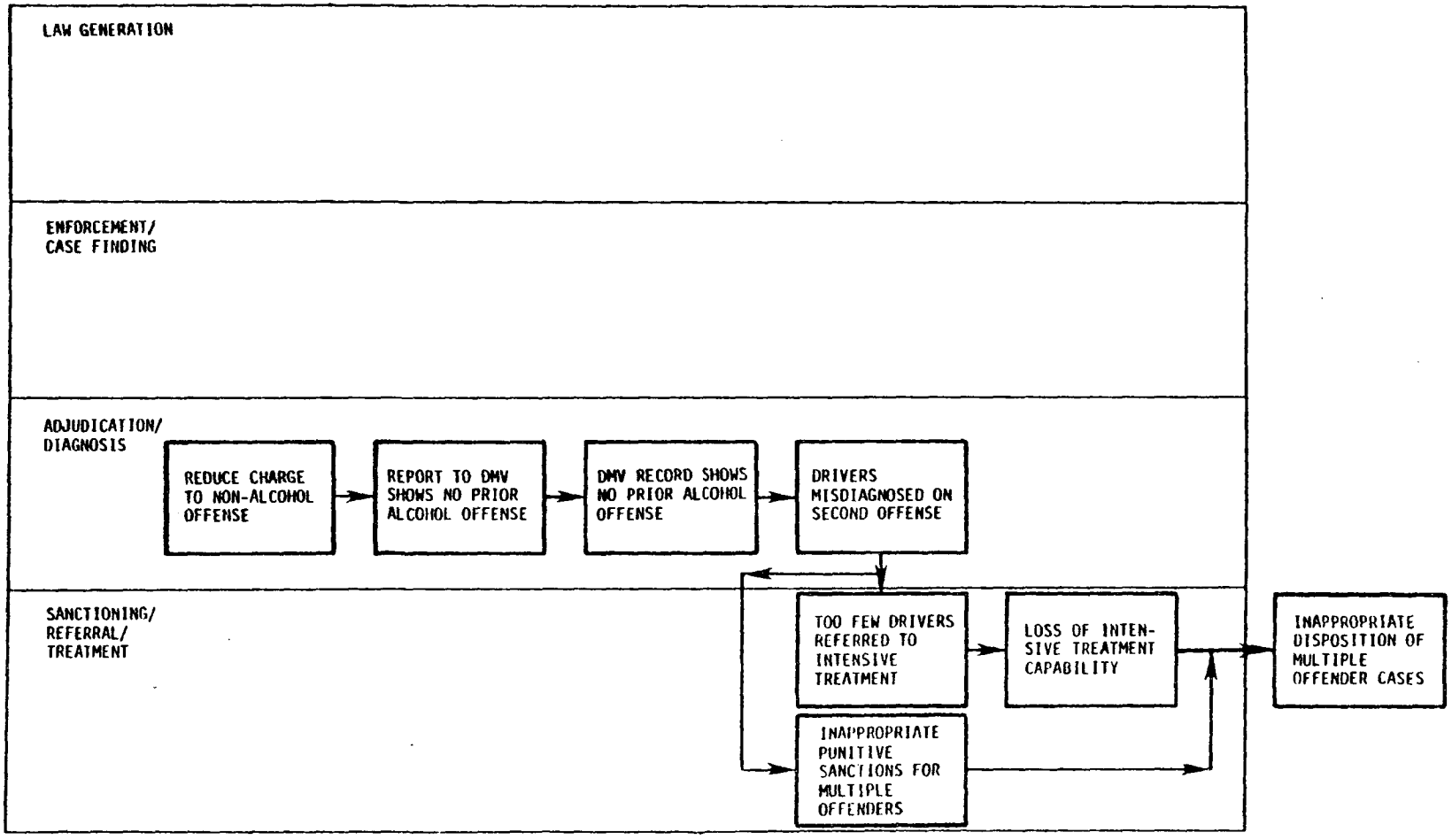
Rio Charro is a stable, conservative southwestern city of 500,000. It developed its own health/legal system in the mid-1960s after an influential judge, who was a recovered alcoholic, set up an experimental program to refer alcoholic drunk drivers to an Alcoholics Anonymous chapter. The court system in Rio Charro had had a highly competent and efficient probation department for felony cases for many years before the drinking-driving program was initiated. The new program attached itself quite naturally to this existing structure and gradually evolved into a comprehensive health/legal system that referred a wide range of drinking-driver types to an impressive array of treatment modalities.

The statutory environment had always been supportive of a probation case-disposition process. Fines, jail sentences, and driver's license sanctions for drunk driving were highly flexible and left a great deal of discretion to judges. The probation statute permitted final disposition to be delayed by up to five years while the convicted drunk driver completed his treatment program.

Suddenly, in 1974, the legislature, on the last day of session, made mandatory the previously discretionary thirty-day jail sentence for second-offense drunk driving within five years. No one had expected this bill actually to pass, and it probably would not have except for some last minute political "horse trading." As a result, Rio Charro was totally unprepared for what followed.

Rio Charro's program had not deliberately been designed after a systematic consideration of alternative approaches. Change had come

Figure 5-2
Problem Chain Involving Loss of Information
About Prior Drunk Driving Offenses
in a Reduced Charge Process



naturally and informally in response to strongly applied stimuli. There was therefore no tradition or mechanism for responding in a coordinated way to the new law. The city chose to let the system "adjust" to the new law as it had adjusted to less abrupt demands in the past.

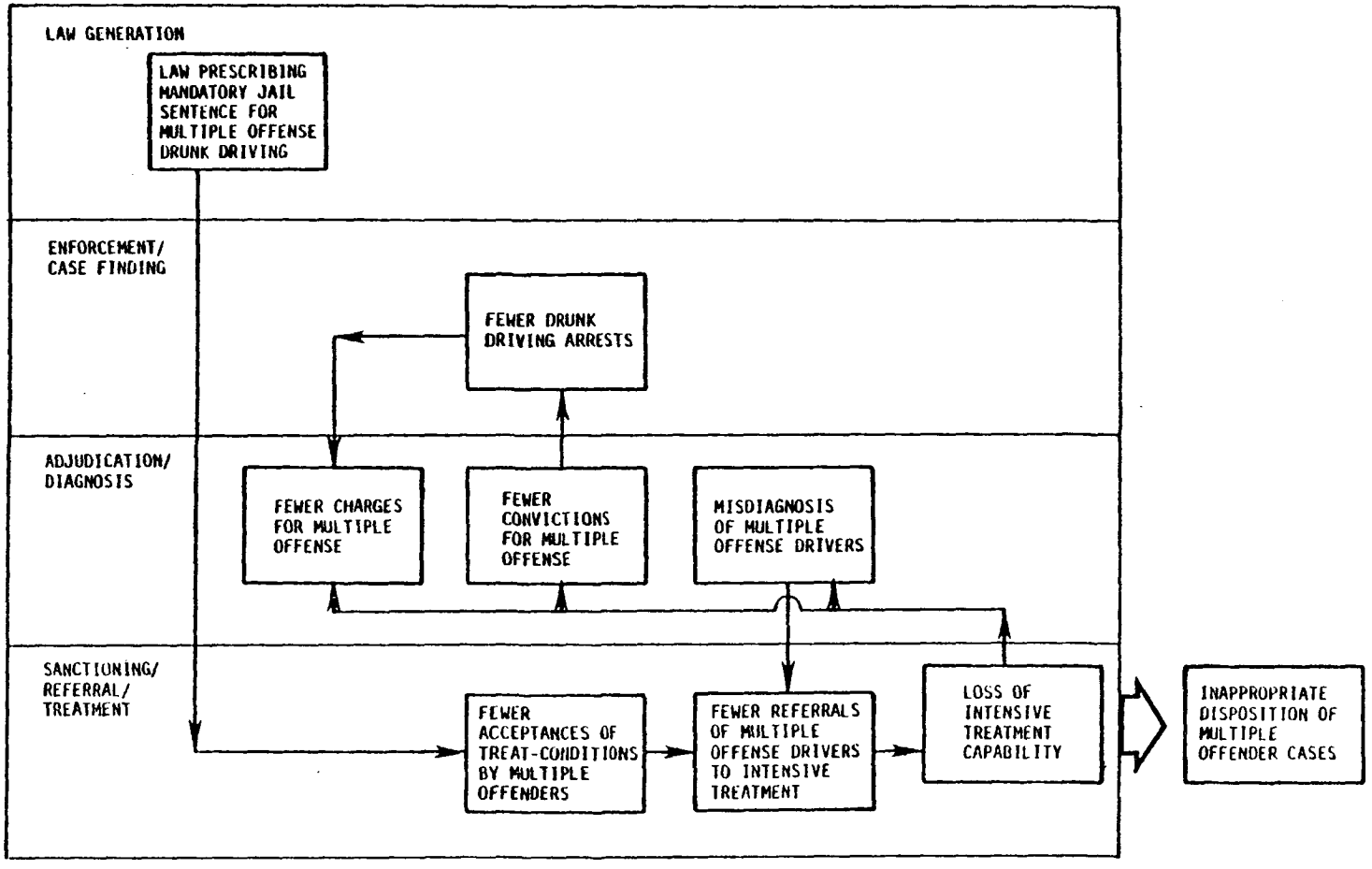
By the end of 1976, a host of problems had arisen and Rio Charro's program was in trouble. The problems were so diverse and pervasive that it was hard to believe they could all stem from the new statute. First, the arrest rates for drunk driving had decreased by nearly thirty percent. Also, drivers who were arrested were being charged with drunk driving less frequently. When the drunk driving charge was retained, there was decreased likelihood of a guilty plea annd a greatly increased chance that the charge would be reduced by a plea bargain.

The conviction rate had also decreased drastically. Before the mandatory jail sentence became law, the conviction rate for drunk driving was more than ninety percent. it had now decreased to sixty-two percent. Further, a much smaller percentage of convicted drunk drivers was being referred to treatment, even though the percentage being diagnosed had not changed significantly.

The impact of all of these changes on the treatment function was enormous and was in fact the first effect of the new law to be noticed. Many drivers were refusing to accept the treatment option because judges could no longer eliminate jail sentences in exchange for an agreement to participate in treatment. Other drivers were being diverted from treatment by plea bargains. Before the mandatory jail sentence, about seventy-five percent of arrested drunk drivers were being referred to treatment. Now, only about twenty-one percent were being referred. All in all, the number of treatment referrals was only about twenty percent of what it was before the new law. The main treatment facility had already had to lay off several counselors, and there was talk that the new treatment facility would have to close soon because of a lack of patients.

Figure 5-3 depicts the problem chain that developed from the new

Figure 5-3
Problem Chain Involving Loss of Inducement
for Treatment for Multiple Offenders
in a Probation Process



law's requiring a thirty-day jail sentence for drunk driving.

Sentencing Restrictions and Lack of Resources in a Delayed Sentence Process

Centerville is a city of about 250,000 population located in the southeastern part of the country. Its case-disposition system for drunk drivers is a variation of the reduced sentence type. Treatment conditions are imposed after conviction, and final sentencing occurs after the required treatment period has elapsed. If the court is satisfied that the treatment period has been completed, a reduced sentence is imposed. A conditional sentence is imposed after conviction and final sentencing occurs after the required treatment period has elapsed. Nearly all convicted drunk drivers are given the opportunity to participate in Centerville's alcohol program. They are diagnosed and referred after conviction. Diagnosis, referral, and treatment supervision are all performed by court counselors. Treatment is provided by a state agency with a regional facility that serves Centerville and several other smaller cities and towns in a three-county area. A wide range of treatment modalities is offered.

A major problem in Centerville's health/legal system appeared when a convicted drunk driver with a long list of alcohol-related driving convictions struck a group of pedestrians waiting for a light to change at a downtown intersection. Two pedestrians were killed and two others were seriously injured in the collision. The driver's BAC was .22% w/v. The incident was reported in a front page story in the Centerville Times. The story was later expanded into a series on Centerville's "soft" approach to dealing with drunk drivers when it was found that the driver of the "death car" had recently been convicted of drunk driving and had been assigned to the court-based treatment program.

Further digging by the investigative reporter revealed that the driver had entered the program six weeks ago and had attended only the first two sessions of his assigned therapy. The reporter found that less than ten percent of referred drunk drivers completed their

treatment program. Half of the drivers attended less than twenty percent of their program. Despite this generally low participation, only five percent of the drivers referred received harsher punitive sanctions at final sentencing as a result of their failure to keep their bargain with the court.

Centerville's court was a part of a unified court system that had recently been established in the state. The traffic court division of the state court was directed by the state's chief justice to perform an in-depth analysis of Centerville's court referral program for drunk drivers to determine what had gone wrong and what might be done to correct the situation. Suspecting that the problem might be a symptom of other more fundamental problems, the study group decided to analyze each function of Centerville's health/legal system, starting with the treatment function.

After discussing the problem with the director of the treatment facility and examining the records of court-referred drunk drivers, the study team arrived at a partial explanation of the primary system failure that had led to the pedestrian accident. First, it found that there was little or no supervision of drunk drivers referred by the court. Neither court counselors nor treatment staff were checking to see if referred drivers were complying with the reduced-sentence condition set down by the court. Second, few convicted drunk drivers were being referred to the long-term, more intensive modalities that might be indicated for treating drivers with severe drinking problems.

The study group next conducted a series of interviews with the judges of the Centerville District Court. It was found that judges were imposing final sentences on an exception basis. The judge would ask the court counselor if there was any reason why the sentence should not be reduced. If the counselor know of no reason for imposing a harsher sentence, the judge would automatically impose the punitive sanctions stipulated in the reduced sentence. Because they did not closely supervise their clients, the counselors seldom could provide the judge with any reason for not reducing the sentence, and

nearly all drunk drivers were automatically given the reduced sentence.

The study group also found that judges seldom prescribed intensive treatment because of a state law limiting the time between conviction and sentencing to sixty days. Several judges observed that this policy should not present any difficulties, because the court counselors seldom recommended long-term treatment programs anyway. In fact, most judges said that they seldom read the presentence reports because they nearly always recommended the same "treatment"--a six-week alcohol education course.

The study group next contacted the court counselors' supervisor. The group found that two counselors were assigned to drunk driving cases. Each counselor maintained a caseload of about 350 clients. The group was aware of a state law requiring detailed presentence investigations for all convicted drunk drivers and wondered how that and other related activities could be accomplished with only two court counselors. The answer provided was that the counselors did not perform any "other related activities" (including supervision of clients). More counselors could not be hired because of lack of funds. Moreover, despite the detailed work-ups they performed, they seldom recommended longer-term treatment for severe problem drinkers because they knew the judges could not delay sentencing long enough to complete treatment.

Discussions with prosecutors and police officers revealed a surprising lack of knowledge about what was happening at the other end of the health/legal pipeline. Conviction rates were high and drunk drivers were receiving punitive sanctions as well as treatment. There were few trials because most drunk drivers were pleading guilty to the original drunk driving charge. Thus, the police were continuing to arrest and the prosecutors were continuing to prosecute drunk drivers.

The study group concluded that there were several serious problems in Centerville's health/legal system that were strongly affecting the system's ability to provide appropriate treatment for drunk drivers.

The group identified a problem chain that was somewhat more complex than those in the two preceding examples. Centerville's problem chain was actually several interconnected chains, each culminating at treatment (see Figure 5-4).

Narrowly Defined Target Group in an Administrative Process

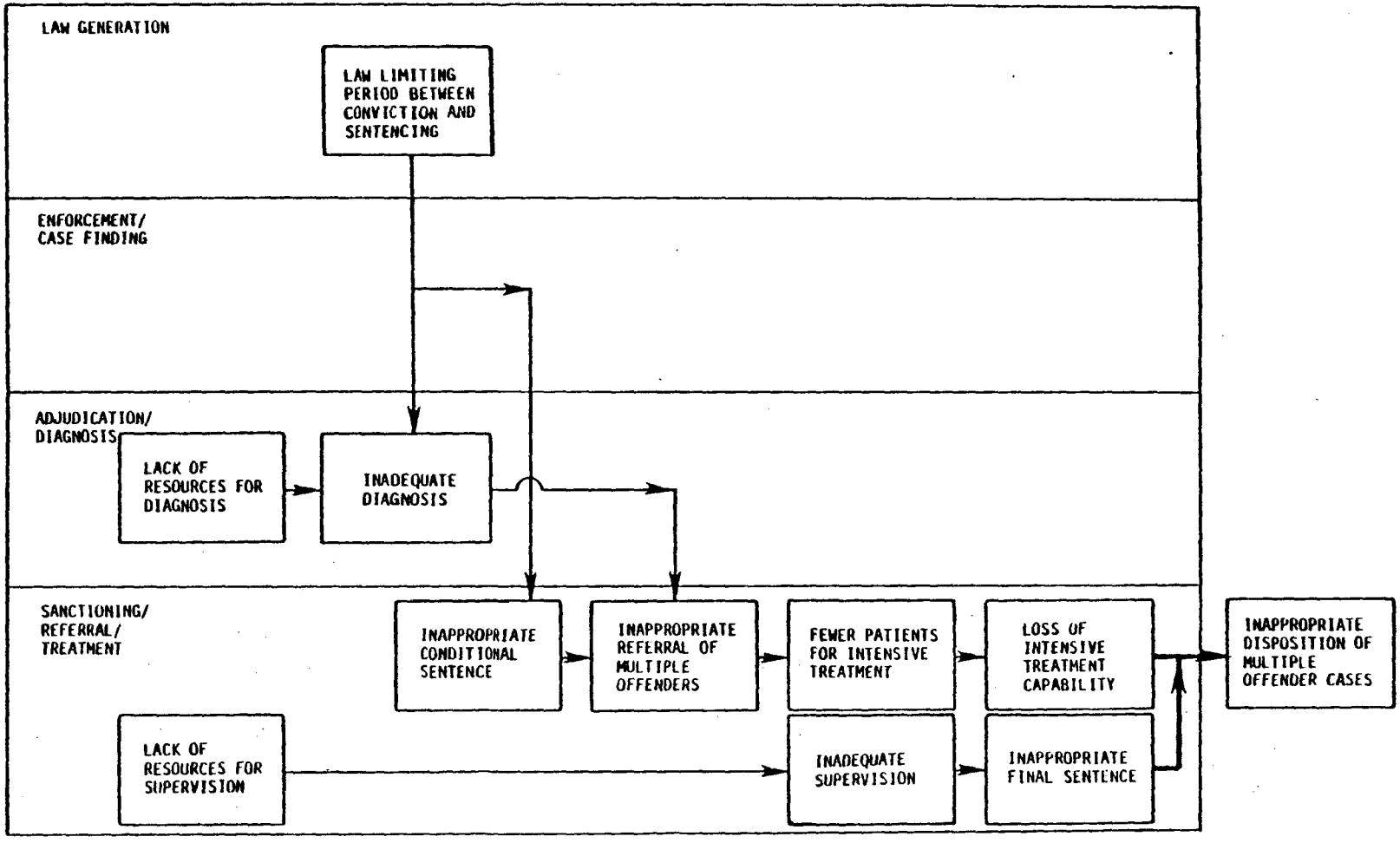
Northington is a large population center in the northeastern United States. It used a suspended sentence process to refer only alcoholic drunk drivers to treatment programs before a state law was passed requiring all first-offense drunk drivers to attend an alcohol education program. The new program was run by the state DMV in collaboration with the state's Department of Substance Abuse, which had established a series of regional treatment centers that provided a wide range of services for persons with alcohol and other drug problems.

The new statute required the DMV to suspend the driver's license of all persons convicted of drunk driving. First offenders received a six-month suspension, and drivers convicted of a multiple offense received a one-year suspension. First offenders could get a provisional license upon entering the alcohol-education program and could have their suspension lifted after satisfactory completion of the program. Multiple offenders were not eligible for the education program or the provisional license.

In terms of participation, the new alcohol education program was an immediate success. Ninety-seven percent of all convicted first offenders in Northington participated in the program during its first year of operation. The state's Office of Highway Safety did a study of the program's performance in Northington and other participating jurisdictions and concluded that the program was significantly reducing drunk driving recidivism. The basis for this conclusion was that convictions for multiple-offense drunk driving had decreased by sixty percent since the start of the new program.

The Chief of Police of Northington was surprised to hear that recidivism had decreased and asked his data processing department to

Figure 5-4
Problem Chain Involving Sentencing Restrictions
and Lack of Resources in a Delayed Sentence Process



check arrest records and determine the percentage of persons arrested for drunk driving who had prior convictions for drunk driving. The record check showed no significant change in this percentage during the first year of the new alcohol program and also showed no change in absolute number of arrested drunk drivers with "priors." The chief asked the head of his statistical analysis group to look into the matter further to see what was happening to the missing multiple offenders.

The analyst checked with the city attorney's office first. She found that arrested drunk drivers with prior convictions were routinely being plea bargained down to first-offense drunk driving or even reckless driving. The city attorney claimed that this was because defense attorneys were requesting jury trials for multiple-offense drunk driving and a "huge" backlog of cases awaiting trial resulted. Further, the city attorney said that after a case got to trial, juries would seldom convict the defendant and when they did, defense counsels would often appeal to the Superior Court where the case would be heard **de novo**. The city attorney said that the Superior Court regarded drunk driving cases as a "nuisance" and that the cases would sometimes "get lost" or be dismissed.

Further checking with the trial level and the appellate court confirmed the city attorney's analysis of the situation. The analyst also learned that some judges were dismissing **first offense** drunk drivers because they resented the DMV "usurping" their discretionary sentencing prerogatives.

The analyst was then able to construct the full problem chain (see Figure 5-5). A new law designed for early interdiction of drunk driving "careers" had caused a significant breakdown in existing processes for dealing with drunk drivers who were already a serious threat. Prosecutors were failing to prosecute, juries were failing to convict, and appellate courts were failing to retry multiple offenders. Court backlogs had increased rapidly and there was the beginning of a judicial "backlash" even against the process for handling first offenders. The analyst suspected that all of this had

already begun to affect enforcement and that reductions in arrest rates would soon be noticed.

Early Identification of System Problems

The problems described in the preceding examples became known to health/legal personnel only after a serious impact on system performance had become apparent. Even then, personnel in some functional areas were unaware that a problem in another area was undermining their efforts and the ultimate performance of the system. it would have been better to have identified the problems and their causes before the problems had become so serious and when less drastic corrective actions would have worked.

Early identification of system problems requires that each component of the system continually monitor its performance. When unacceptably low levels of performance are noted, representatives of other system components should be notified and meetings held to review the problem and to identify alternative strategies for solving the problem. Both quantitative performance measures and qualitative performance indicators should be monitored to determine whether absolute levels of performance are high enough and to note any unacceptable reductions in performance.

One way of doing this is to maintain a current system description. One person should be assigned this responsibility and should regularly publish and distribute revisions of the system description. Also, some formal mechanism (such as a system coordinating committee) should be established to review system performance and to recommend strategies for improving it when necessary. Each functional area must have a representative on such a committee so that the total impact of proposed changes can be considered.

DEVELOPING ALTERNATIVE STRATEGIES FOR SOLVING SYSTEM PROBLEMS

The second step in the health/legal design process is to develop possible strategies for eliminating or ameliorating identified problems. The problem chain diagram is a good starting point in

developing such strategies. The remedies can be aimed at the root causes of the problems or at intermediate causes.

For example, in Lakeview an alteration in the procedure used to induce a drunk driver to enter a treatment program spawned a problem chain in the reduced charge process (see Figure 5-2). The new procedure reduced drunk driving to a nonalcohol offense, and a subsequent loss of information about prior drunk-driving offenses undermined sanctioning, referral, and treatment. Thus, two root-cause remedies are immediately suggested:

1. Eliminating the necessity to reduce the charge to a nonalcohol offense by defining more than one level of drunk driving. A driver charged originally with a higher-level alcohol offense with relatively severe punitive sanctions could have the charge reduced to a lower-level alcohol offense with less server sanctions in exchange for participating in an agreed treatment program.
2. Reverting the processing procedure to a reduced-sentence process, thus eliminating the necessity for any charge reduction.

Intermediate-cause remedies for the same problem chain could include:

1. Annotating the driver record to indicate the original drunk driving charge.
2. Developing other diagnostic criteria for determining the need for more intensive treatment and punitive sanctions. Such criteria would place less weight on prior drunk-driving convictions as an indicator of sanctioning needs.

The root cause of the problem chain in the probation process in Rio Charro was the law requiring a jail sentence for anyone convicted of a multiple-offense drunk-driving charge (Figure 5-3). This suggests two root-cause remedies for improving system performance:

1. Eliminating from the drunk-driving statute the provision for mandatory jail sentences for multiple

offenders.

2. Switching to a reduced-charge process that would not require conviction of the multiple-offense charge to enroll the defendant in a treatment program.

Two intermediate-cause strategies for the probation problem chain would be:

1. Providing other inducements to multiple offenders for participating in a treatment program, for example, a provisional driver's license and smaller fines.
2. Providing preferred "jail" facilities for multiple offenders who participate in treatment. Such treatment could initially be provided by the jail facility during the term of incarceration.

The problem chain in the Centerville delayed sentence had two root causes (Figure 5-4). First, a lack of resources precluded adequate diagnosis and supervision of drunk drivers. Second, a state law limiting the period between conviction and final sentencing prevented referral to more intensive treatments, which required more time to complete than the law allowed.

An obvious remedy for the first root cause would be to provide more resources for diagnosis and supervision, possibly through treatment fees charged to convicted drunk drivers. An alternate strategy for providing more resources would be to switch to an administrative process and let the DMV perform the diagnosis and supervision. Another strategy would be to organize treatment agencies with statewide funding to support comprehensive services. Strategies to cope with the time limitation might include:

1. Eliminating the law restricting the time between conviction and sentencing.
2. Changing the law to increase the time between conviction and sentencing.
3. Changing to a reduced charge or probation process.
4. Imposing final sentence before completion of treatment and suspending a portion of the sentence

upon completion of the treatment (i.e., a suspended-sentence process).

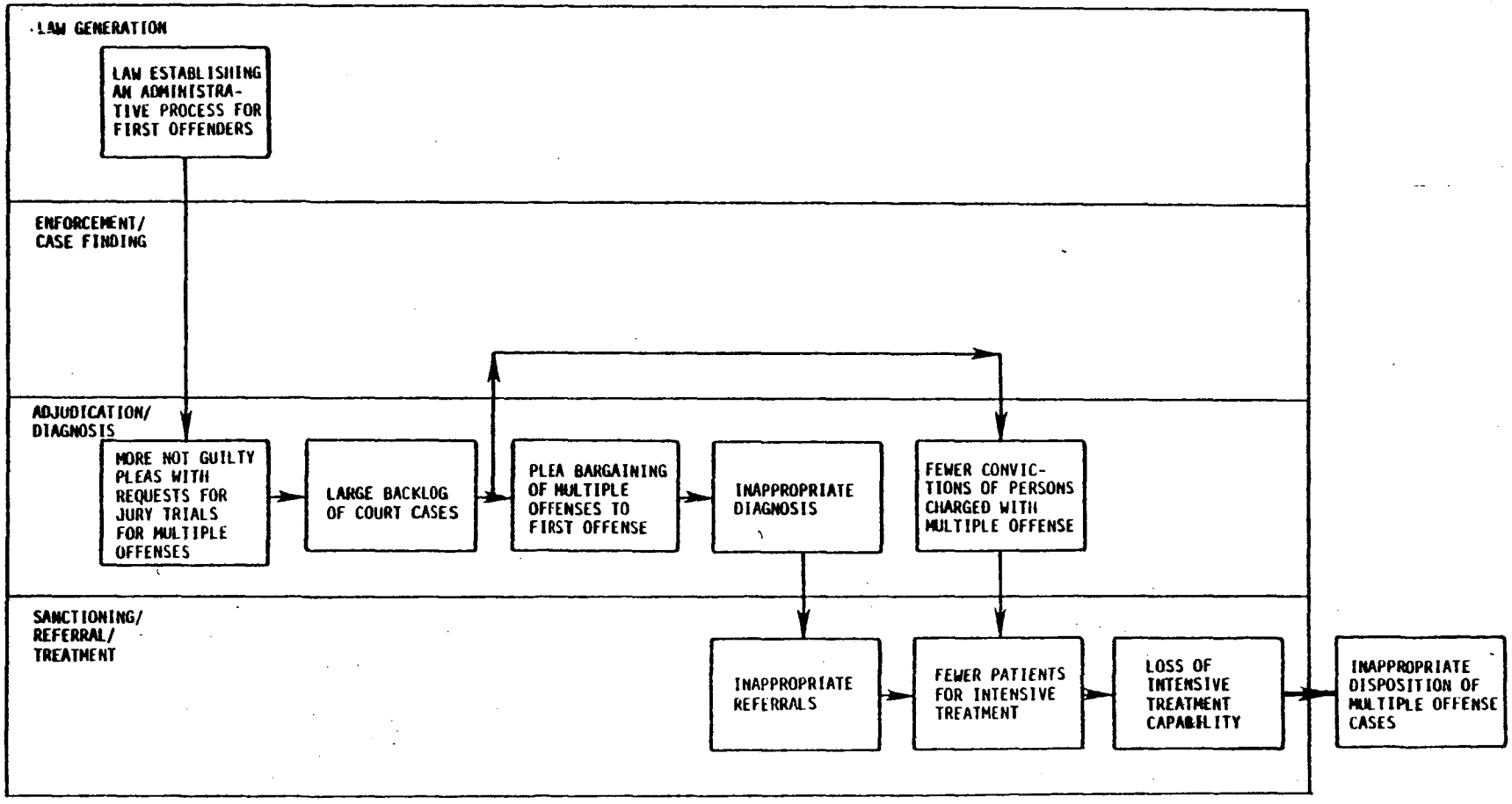
The problem chain in Northington had its root cause in a law establishing a treatment program for first offenders and mandating harsh driver's license sanctions for multiple offenders (Figure 5-5). The program in effect destroyed the jurisdiction's existing program for dealing with drunk-driving multiple offenders. Some obvious possible strategies aimed at the root cause of this problem chain include:

1. Eliminating the law establishing the new procedure.
2. Modifying the law to allow multiple offenders to participate in the administrative process.
3. Modifying the law to allow multiple offenders to obtain a provisional license if they participate in a court probation treatment program.
4. Establishing a hybrid process using a reduced-charge approach for multiple offenders.

Some strategies for dealing with derivative problems of the new law might include:

1. Expanding the system's processing capability to handle the increase in jury trials. A tax on alcoholic beverages might be used to provide funds for financing the expansion.
2. Changing the state constitution to eliminate jury trials for drunk driving offenses.
3. Passing a law prohibiting plea bargaining of drunk driving offenses.
4. Making district courts the courts of record to eliminate trials de novo for all appealed drunk-driving cases.
5. Passing a law giving judges the authority to recommend the period of license suspension for first offenders (to address judges' belief that their sentencing power is being usurped).

Figure 5-5
Problem Chain Involving a Narrowly-Defined
Target Group in an Administrative Process



Note that the adoption of one remedy does not necessarily preclude the adoption of another complementary remedy. For instance, in the last example above, one might want to employ a strategy involving a change in a court probation process, an expansion in processing capability, a law prohibiting plea bargaining, and the elimination of trials de novo for appealed drunk driving cases. Also note that none of the strategies listed above can be recommended at this juncture as the optimal solution for the problems it addresses. Each strategy must be methodically analyzed to determine its overall effect on the particular health/legal system in which the problem chain occurred. Sometimes such an analysis will show that a strategy that appears desirable on the surface will have unforeseen side effects that are worse than the original problem it sought to solve.

SELECTING A PREFERRED STRATEGY FOR A SYSTEM PROBLEM

The final step in the health/legal preliminary design process is the selection of a problem-solving strategy for detailed design and implementation. Factors to consider in deciding which remedy to select include:

- the ability to accomplish the system's functional objectives,
- the ability to meet system constraints,
- the ease and timeliness of implementation, and
- the likelihood of a successful implementation.

The first two criteria state the need to select the strategy, which, when implemented, will result in the highest level of system performance. The last two criteria relate to the need to select the strategy that can be implemented when needed.

Determining the effect of each possible stategy on system performance requires a function-by-function analysis of the health/legal system. With current knowledge this analysis will have to be mostly subjective and qualitative, since we do not have a computerized model of health/legal systems that would accept design changes as an input and calculate performance as an output. Our only

"model" is the system description, which describes the interrelated system functions and which estimates the performance of the "baseline" or current system in accomplishing functional objectives and meeting system constraints. The strategy that results in the best overall performance and can meet implementation requirements is selected for implementation.

In summary, then, the process for selecting the preferred problem-solving strategy involves four steps:

1. for each candidate strategy, revise the system description;
2. estimate the performance of each revised system;
3. estimate the implementation requirements of each revised system; and
4. select the strategy that has the highest performance and meets the implementation requirements.

The remainder of this section illustrates the application of these steps in choosing strategies. The strategies to be assessed are taken from among those that were suggested in the preceding section for solving the problems that arose in the four hypothetical health/legal systems.

Selection of a Strategy for the Loss-of-Information Problem in the Reduced Charge System

Lakeview established an Alcohol Safety Project Coordinating Committee (ASPCC) to select a strategy to deal with their loss of information. The committee was composed of representatives from all the functional areas of their health/legal systems and included a state legislator, the chairperson of the city council, the chief of police, the chief prosecutor, the head of the public defender's office, the head alcohol counselor, the presiding judge, the director of the county's alcoholism prevention council, a representative from the state DMV, and the chairperson of the Citizen's Committee for Highway Safety. ASPCC was quick to agree that only two strategies had any chance of working in Lakeview:

1. establishing a two-level drunk driving offense, or
2. revising the driver record system so that convictions for reduced charges would indicate the original drunk-driving charge.

The committee appointed a working group of specialists from component organizations to revise the system description to reflect each strategy. The working group prepared a chart summarizing the expected impact of the strategies on each functional area, system constraints, and implementation requirements. The chart was reviewed by ASPCC and "finalized" in the form shown in Figure 5-6.

Strategy One was viewed as more desirable in the long run by all committee members except the DMV representative. She said that her agency did not favor a two-level drunk-driving offense because of the necessity for extensive changes in the administrative rules for suspending and reinstating the driver's license. The state's uniform traffic ticket and complaint (UTTC) and the driver record system itself would also have to be modified to reflect the two-tiered offense. The committee members noted that even if these objections could be overcome (and they believed that they could), a statute change could not be made for two years because the state legislature would not meet again until then.

Strategy Two was unanimously accepted as more desirable in the short term, although there was some concern about a possible due-process violation in using charges rather than convictions as a basis for sentencing. It could be implemented fairly quickly at low cost with minimal effort and with high confidence of success. Thus, the consensus of the committee was to adopt Strategy Two as a short-range solution and work toward the adoption of Strategy One in the longer-range future. Plans would be made for getting the statute change through the state legislature at the same time that plans were being made for retraining, modification of the driver licensing and driver record systems, changing the UTTC, and informing the public about the new statute.

Figure 5-6
Impact Analysis of Strategies to Remedy the Loss of Information in a Reduced-Charge Process

IMPACT AREA		STRATEGY	
		1. Two-level drunk-driving offense.	2. Annotated driver record.
LAW GENERATION		Requires change in state statute. State legislature meets in two years. Some opposition expected. Administrative rules changes also required. DMV opposes.	No statute change required. Administrative rules changes required. DMV will cooperate.
ENFORCEMENT/ CASE FINDING		No large impact expected. Police will continue to arrest on more serious charge. Mildly unfavorable effect on police attitudes. Uniform traffic ticket would have to be changed.	Favorable impact on police attitudes. All other impacts negligible.
ADJUDICATION/ DIAGNOSIS		Would provide necessary information for diagnosis. New policy required for prosecution. Defense counselor may object because of more serious reduced charge. Would increase number of cases going to trial by about ten percent.	Would provide necessary information for diagnosis. No new prosecutor's policy required. Little objection expected from defense counselor. Negligible increase in number of cases going to trial.
SANCTIONS/ REFERRAL/ TREATMENT		Harsher punitive sanctions could be imposed. Informal punitive sanctions (i.e., insurance rates) will be harsher. Would provide necessary information.	Retains the least harsh formal punitive sanctions. Informal punitive sanctions will be harsher than at present. Requires a different reporting procedure for judges. Would provide necessary information.
CONSTRAINTS	FAIRNESS/ HUMANENESS	Minimal impact.	Possible objection by state bar association.
	PUBLIC ATTITUDES	Favorable.	Favorable.
	COST	Minimal impact.	Minimal impact.
	TIME	Slight increase due to more cases not being diverted.	Minimal impact.
IMPLEMENTATION REQUIREMENTS		Long lead time. Lobbying required. Minor retraining required, especially for judges, DMV personnel. Requires modification of driver record system and uniform traffic ticket. Minor public information campaign needed. Moderate risk of failure.	Short to moderate lead time. Moderate retraining required. Minor modification to driver record system required. Minimal risk of failure.

Selection of a Strategy to Remedy the Loss of Inducement for Treatment in a Probation Process

The mayor of Rio Charro appointed a five-person commission to examine possible strategies to deal with the problem chain caused by the new statute's requiring a thirty-day mandatory jail sentence for a second drunk-driving conviction within a five-year period. Members of the commission were the chief judge, the city attorney, the director of the probation department, the director of the program for alcohol abuse, and the deputy mayor. After careful study of possible strategies (see Figure 5-7), the group selected two as having the most promise:

- changing the case-disposition process from probation to reduced charge, and
- using preferred jail facilities to provide treatment for multiple offenders.

The commissioners ultimately decided to select the reduced-charge strategy mainly because they believed that plea bargaining of multiple-offense drunk driving had already become a "fact of life" in their system and, if improved, could be made to work. They agreed that the "preferred jail" was not a strong enough inducement for multiple offenders. They reasoned that by incorporating the requirement of treatment into the plea-bargaining process they would at least increase the percentage of drunk drivers that was being referred to treatment.

Another factor that entered into their decision was cost. The charge-reduction process would cost about the same as the present process. All of the present facilities could be used and no new court employees would be needed. The preferred jail strategy would have brought considerable expense to acquiring and running a new jail.

Finally, Rio Charro selected the reduced-charge process because of the belief that it would be easier to implement key changes at the local level, where, the commission felt, the jurisdiction had adequate power. The preferred jail strategy could introduce an array of external problems, including the need to convince the state

Figure 5-7
Impact Analysis of Two Strategies to Remedy
the Loss of Inducement in a Probation Process

IMPACT AREA	STRATEGY	
	1. Change to reduced charge process to get treatment participation	2. Provide preferred jail facilities for multiple offenders in treatment.
LAW GENERATION	Law changes would not be necessary. There is already authority vested in judge or prosecutor to reduce or dismiss DWI charges. Statutory embodiment of the procedure would be helpful to blunt charges of unfairness or favoritism.	Appropriations for preferred jail facilities would have to come from state legislature or local government. A statute might be required designating treatment agency as a jail. Chances for appropriation slim since new jail was recently built.
ENFORCEMENT/ CASE FINDING	A significant impact possible. The cause of police dissatisfaction is still present--plea bargains. Policy may be negative to formal plea bargain procedure. However, police may feel that since plea bargains are a fact of life, a formal procedure that includes treatment is an improvement. If they feel this way, arrest rate is likely to increase.	No impact likely. The cause of dwindling drunk driving arrest, plea bargaining, would still exist. It is possible that arrest rates might drop even more if police perceive "preferred jail" as a "country club."
ADJUDICATION/ DIAGNOSIS	Charges of drunk driving would likely increase since it would be a firm policy to reduce later. There would be many fewer guilty pleas to, as well as convictions of, drunk driving. Unless appropriate steps were taken, there would be a reduced ability to diagnose drunk drivers based on prior drunk driving convictions.	No significant impact likely. Second offense drunk driving defendants would continue to perceive the preferred jail as onerous. They would continue to try all methods to get charge reduced or dismissed.
SANCTIONS/ REFERRAL/ TREATMENT	Great impact in referral rates. If treatment conditions were incorporated into plea bargaining process, drunk driving charge reductions would not preclude treatment. Treatment facility could stay open and rehire counselors when court referrals increased.	A significant impact is likely. Those defendants that are convicted of second offense DWI would be likely to want to participate in treatment to receive preferred jail. If treatment center could provide preferred jail facilities, it could remain open. Maximum impact could not be obtained however, if plea-bargained drunk drivers did not receive treatment.
CONSTRAINTS: FAIRNESS/ HUMANENESS	A significant impact. Charge reduction process would have to be administered fairly to avoid charges of favoritism.	It is probable that preferred jail would be considered more humane than jail.
CONSTRAINTS: PUBLIC ATTITUDES	Favorable	Favorable
CONSTRAINTS: COST	Little or no impact--since no new processes would be required; could use same facilities. The cost of supporting prisoners in jail for 30 days would be reduced.	High impact--cost of providing preferred jail would be high. However, costs could be reduced if drunk driver paid fee for preferred jail.
CONSTRAINTS: TIME	The time for adjudication of case would increase, but time for probation would decrease correspondingly.	No impact.
IMPLEMENTATION REQUIREMENTS	Some retraining of probation officers and judges would be necessary, so that they would be familiar with the procedures used for processing drunk drivers under the reduced charge process. Prosecutor would also need to become familiar with reduced charge treatment process. Would need forms which would expedite the processing and at the same time protect individual rights. The defense bar would need to be educated about the process.	Staff for the "preferred jail" would have to be hired and trained. Staff would include treatment couselors, administrators and "guards." Considerable lead time to convince legislature to appropriate funds, then to make arrangements for "preferred jail." High risk of failure in getting appropriations.

legislature to adopt the strategy. The commission had already rejected the strategy calling for the elimination of the mandatory jail sentence, because of a lack of support by key legislators. (One member of the committee lamented the "lack of communication" that caused legislative intent to be circumvented.) The commission noted the impact of charge reduction on the court's ability to identify prior drunk driving offenses and adopted the complementary strategy of annotating the driver's license to show prior drunk-driving offenses.

Selection of Strategies for Sentencing Restrictions and Lack of Resources in a Delayed-Sentence Process

A study group had been established by the traffic division of the state court system to analyze Centerville's health/legal problems. This group was assigned the additional task of identifying strategies to deal with those problems and was expanded to include representatives from other components of the health/legal system. The group selected four strategies for in-depth analysis. The system description was modified to reflect each strategy. For the sentencing restrictions problem the following strategies were studied (Figure 5-8):

- changing the law to increase the time between conviction and sentencing, and
- changing the case-disposition process from delayed sentence to suspended sentence.

Strategy One was rejected because it would require considerable effort and a long time to change the statute. Also, the group believed that there was a strong possibility that the required legislative support could not be obtained in the near future, even after an intensive lobbying campaign. On the other hand, Strategy Two should be fairly easy to implement because it had been used in limited instances in the past and was understood by the court. It could easily overcome the time-delay problem simply by imposing the sentence immediately after conviction and then suspending part or all

Figure 5-8
Impact Analysis of Strategies to Remedy Sentencing Restrictions Problem in a Delayed Sentence Process

		STRATEGY	
IMPACT AREA		1. Change law to increase time between conviction and sentencing.	2. Suspend sentence upon completion of treatment.
LAW GENERATION		Great impact here. State legislature would have to change the law allowing for more time between conviction and sentencing. This is unlikely, as present law was passed several years earlier to speed up the presentence investigative process in felonies. The only possible plan would be for legislature to differentiate between felonies and misdemeanors.	Since judges already have the power to impose sentence and then suspend a portion of it upon satisfaction of a set of conditions, there is no impact here.
ENFORCEMENT/ CASE FINDING		No impact expected.	No impact expected.
ADJUDICATION/ DIAGNOSIS		Minimal impact expected. If period between conviction and sentencing is increased, the length of time before the conviction appears on the driver record is increased. This would have a negative impact on using "priors" as a diagnostic tool.	If suspended sentence is used, it can be used immediately, or very soon after conviction. As a result, record of the conviction can be reported quickly to OMV and later used as a diagnostic tool.
SANCTIONS/ REFERRAL/ TREATMENT		The range of treatment alternatives would be increased. With more time, more comprehensive treatment programs would be possible. Also, referral would be possible. If different, longer treatment programs are recommended, judges will be more likely to read the reports.	The range of treatment alternatives is greatly increased. The judge can continue to enforce suspended sentence conditions for a maximum of two years. Therefore, he can continue to require treatment as a condition of suspended sentence for up to two years. This would greatly increase the comprehensiveness of treatment available. If other treatment can be recommended, the judges are more likely to read the reports.
CONSTRAINTS	FAIRNESS/ HUMANENESS	For those drunk drivers needing more extensive treatment, this strategy would be humane. Might be objection that the process of determining who gets more extensive treatment is not reasonable.	Same as Strategy 1.
	PUBLIC ATTITUDES	Public attitudes may be against the extension as further interference of the court.	Public is likely to favor shortening of sentencing procedure. No longer necessary to appear in court after treatment if satisfactorily completed.
	COST	Cost of supervision of defendants for extra periods of time would increase, assuming supervision level increases.	Cost of supervising defendants would increase. Cost of bringing defendants back to court for final sentencing would decrease.
	TIME	Would further elongate the adjudication process, affecting the court and the OMV.	Time for adjudication would decrease unless treatment <u>not</u> satisfactorily completed.
IMPLEMENTATION REQUIREMENTS		Long lead time required. Extensive lobbying necessary because legislature was clear when it set the 60-day limit. Possible objections from state bar association and other legal rights organizations must be met. Some retraining would be necessary for court counselors to acquaint them with more treatment services than the alcohol education course. Since supervision techniques would need to be provided, more routine supervision procedures would need to be established. High risk of failure because of need for legislative change.	Would need procedures for tighter supervision. Since defendant is required to come back to court after suspended sentence only if he does not follow through, would need someone to make sure defendant follows through. Same increased familiarity with comprehensive treatment modalities would have to be developed as in Strategy 1. Could be instituted immediately. Low risk of failure if supervision is adequate.

of the punitive sanctions upon completion of treatment.

Two strategies were also analyzed for the problem of lack of resources (Figure 5-9):

- having the court require convicted drunk drivers to pay fees for diagnosis and supervision, and
- organizing and financing diagnosis and supervision on a statewide basis.

The study group had considerable difficulty in choosing between these two strategies. The easiest solution would have been to increase fines and costs to cover the cost of adequate treatment supervision. It was believed, however, that this solution would be unjust to the people the courts were trying to help. A recent study of the court counselors' caseloads revealed that sixty-five percent of the drunk drivers currently on delayed sentence had incomes below $10,000. The study group was unanimous in its conclusion that increasing the fines and costs would not be fair to these people.

Instead, the group decided to pursue the statewide funding and organization of drunk driver diagnostic and supervision services for the courts. Despite the length of time that would be necessary to organize and implement such a system, the study group was convinced that it would be worthwhile. The state legislature had already expressed an interest in applying some of the taxes from liquor sales to alcohol treatment services, and the State Highway Safety Commission, responsible for distributing state and federal highway safety funds, was interested in setting up statewide programs for drunk drivers. The group believed that such a solution was both feasible and fair to the citizens of Centerville.

Selection of Strategies for Problems Created by a Too Narrow Definition of the Target Group in an Administrative Process

The findings of Northington's police analyst on the negative effects of the new law aimed primarily at first offenders were published in a special report that was distributed widely within the state. Acting on the recommendation of his highway safety

Figure 5-9
Impact Analysis of Strategies to Remedy Lack of Resources Problem in a Delayed Sentence Process

IMPACT AREA		STRATEGY	
		3. Court required drunk drivers to pay fees for diagnosis and supervision.	4. Organize diagnosis and supervision through statewide funding.
LAW GENERATION		No impact likely. Court has the authority to assess fines and costs. Fines can be increased to statutory maximum if necessary and costs can be increased as much as is reasonable necessary to pay for cost of adjudication (including diagnosis and supervision).	Appropriations would be necessary from state legislature to set up statewide centers for diagnising and supervising treatment of DWIs. Also a new state agency for administrating such a program would have to be created. It is likely that appropriations could come from highway safety funds. It is also possible that tax revenues could be appropriated.
ENFORCEMENT/ CASE FINDING		No impact likely. Arrests are already high and police seem to know little about the lack of resources for diagnosis and supervision.	No impact likely.
ADJUDICATION/ DIAGNOSIS		Significant impact. With more funds available, more court counselors could be hired, decreasing the PSI caseload for each counselor. PSIs could be more thorough and more comprehensive treatment plans could be developed. All of this contingent upon solving the sentencing restriction problem. A possible negative impact would be that with higher fines and/or costs, defendants might be less likely to plead guilty to drunk driving and judges might be less likely to convict.	Same impact as in Strategy 1 with an increase in funds for diagnosis and supervision. Since the fines and/or costs would not be increased the likelihood of decreased guilty pelas and convictions would not exist.
SANCTIONING/ REFERRAL/ TREATMENT		Great impact. With more funds, more court counselors would be hired to perform the treatment supervision. Follow-ups could be performed and detailed attendance records kept. A possible negative impact would be the denial of treatment to those persons who could not afford to pay the extra cost of diagnosis and supervision.	Same impact as in Strategy 1. The possible denial of treatment to persons who could not afford to pay for diagnosis and supervision would not occur.
CONSTRAINTS	FAIRNESS/ HUMANENESS	More comprehensive treatment plans and stronger supervision would ensure more fair and effective treatment. The fees would need to be graduated to allow for differences in ability to pay.	More comprehensive treatment plans and supervision would ensure more fair and effective treatment. Fees could be standard because clients would not have to pay the cost.
	PUBLIC ATTITUDES	Public attitudes would likely be in favor of fees because they cost the defendant money and not the public.	No major impact expected.
	COST	Cost of increased supervision would not have significant impact because it is borne by DWI. However, the increased cost of court time because of more effective supervision procedures might rise.	Significant impact. The cost of financing diagnosis and supervision would take money away from other needs. Court costs might increase because of more effective supervision.
	TIME	With more thorough diagnostic work the length of treatment programs may increase.	Same as Strategy 1.
IMPLEMENTATION REQUIREMENTS		Training would be needed for the increased number of court counselors necessary to supervise the drunk driver caseload. More routine supervision procedures would be necessary to ensure that supervision is performed. A study of the cost of supervision would be needed to determine an accurate amount to charge each client. Low risk of failure since court already has authority to assess fines and costs.	A considerable lead time would be necessary while the diagnosis and supervision systems were set up statewide. Staffing and training of the centers would be necessary. Meetings between local courts and centers would be necessary in order to make the essential link between the two. Reporting procedures would need to be worked out between the two. Moderate risk of failure.

representative, the governor appointed a "blue ribbon" panel to see what could be done to correct the problems caused by the law. The panel included health/legal staff from Northington and other jurisdictions because the problems experienced by Northington were also occurring elsewhere in the state.

The panel concluded that the best long-range solution to the problems was simply to modify the law to offer multiple offenders the treatment option, but recognized that such a strategy would be difficult to implement (see Figure 5-10). The legislature was convinced that multiple offenders could not, as a group, be effectively treated for the drinking problem that many of them suffered and that treatment/education measures had to be applied before they became multiple offenders. The findings of NHTSA staff that "rehabilitation of problem drinkers contributed little to the crash reduction results" attributed to ASAP were interpreted by many legislators to mean that treatment programs would not work for multiple offenders.

Thus, the panel recommended an interim stategy to deal with the immediate problems generated by the new law. The stategy had two parts. First, jurisdictions should adopt a reduced charge process for multiple offenders. Plea bargaining was already occurring more and more throughout the state and it was believed that treatment programs could be quickly and cheaply incorporated into existing practice. The panel recommended that a working group be established to develop a standard reduced-charge system that could meet the needs of local jurisdictions but which would be free of the problems known to have plagued other jurisdictions. Northington itself had experienced one such problem when plea bargaining of multiple offenders had resulted in incorrect diagnosis, misreferral, and improper treatment for this group.

The second part of the panel's interim strategy was to make the district courts the courts of record, so that appeals would not have to be heard de novo (Figure 5-11). This strategy was selected over another intermediate strategy, which would prohibit plea bargaining.

Figure 5-10
Impact Analysis of Strategy to Remedy Narrowly Defined Target Group Problem in an Administrative System

IMPACT AREA		STRATEGY 1. Modify to allow multiple offenders to participate in administrative process.	STRATEGY 2. Establish hybrid process using reduced charge approach for multiple offenders.
LAW GENERATION		New law would be necessary to include multiple offenders in administrative process; would have to provide an adequate inducement to multiple offenders not to want to continue to fight their case in court. Probability of this seems slim. Legislative intent was clear last year when it decided that only first offenders should get license back early. The feeling is that multiple offenders cannot be rehabilitated.	No law change necessary. Courts have authority to reduce charge already. Incorporating charge reduction with treatment requirements would be no problem in this regard. A local or state law would be convenient, if feasible, to insulate the practice from charges of favoritism.
ENFORCEMENT/ CASE FINDING		An administrative process which allowed for early return of multiple offender's license would probably not please police. Their primary concern as was the legislature's, is to keep multiple-offense drunk drivers off the road. They are unhappy with the present situation because multiple offenders are having their cases reduced to lesser offenses and getting their licenses back. The same would happen if there was a law allowing for early return of multiple offenders' licenses.	Probable negative impact on police attitudes. The police are upset about plea bargaining. Making a plea bargaining part of a program would not please them. On the other hand, with less cases going to trial, the police would be happier not to have to appear in court as often. Police are likely to reduce drunk driving arrests if they feel they are going to be plea bargained.
ADJUDICATION/ DIAGNOSIS		A great impact would be felt here. If multiple offenders could get their licenses back early, fewer would fight their cases as hard. This would result in a small backlog of trials and hence fewer plea bargains and appeals, and a high conviction rate. Such a strategy would not solve the proolem of judges' feeling their sentencing power has been usurped. To the contrary, it may make the judges feel that even more of their power is being taken away.	Great impact. If a reduced charge process was used for multiple offenders the trial backlogs would disappear as well as appeals. This strategy would not solve the problem that judges have with first offense administrative sanctioning usurping their sentencing power. Not all of the judges agree with plea bargaining, as a result, this process would have difficulty getting the approval of all judges.
SANCTIONS/ REFERRAL/ TREATMENT		A significant impact. If an administrative process were used for multiple offenders which allowed for an individualized treatment program, more effective treatment referrals would be made. At present most multiple offenders are getting reductions to first offense, for which they are required only to attend a short-term alcohol program. Worse yet, at present, drunk drivers who appeal or get a reduction to reckless are not getting any treatment. There could be an objection from some that punitive sanctions are being relaxed.	A significant impact if all reductions of multiple offense drunk driving were conditioned upon a treatment program. However, a problem could exist if the reduction is to first-offense drunk driving. Since there is already an administrative requirement of a short-term alcohol program for first offenders, treatment as a condition of reduction to first offense would be an additional requirement. Agreement would need to be worked out to have one treatment plan satisfy both requirements. The other alternative of reducing multiple DWIs to reckless would be unacceptable to most judges.
CONSTRAINTS	FAIRNESS/ HUMANENESS	By making the need for a reduction to a lesser offense unnecessary, an administrative process will allow for more consistent, effective dispositions of individual cases.	The charge reduction program would need to be administered consistently to escape charges of unfairness.
	PUBLIC ATTITUDES	Possibly negative. Many citizens feel that courts should be tough on multiple-offense drunk drivers.	Same as Strategy 1. Especially if reduction is to reckless.
	COST	Significant increase. The cost of administrating an administrative system for multiple offenders would have to be borne by DMV. However, there would be a significant reduction in court processing costs.	No significant impact. This strategy merely formalizes a procedure that is presently occurring: plea bargaining. In fact, the cost of drunk driving trials would drop dramatically.
	TIME	Not a major factor. More time would be necessary to diagnose and supervise multiple offenders, but this could be performed within the present one-year suspension period. The time necessary for drunk driving trials and appeals would decrease dramatically.	A large amount of time would be saved which is currently spent on processing drunk driving trials and appeals.
IMPLEMENTATION REQUIREMENTS		A long lead time would be needed. Extensive lobbying would be necessary, which may not be fruitful. There is strong legislative intent to take multiple offense drunk drivers off the road. If law passed, DMV would have to organize structure for diagnosing and referring clients to treatment. Would also have to set up comprehensive supervising process. Structure would already partly exist through Department of Substance Abuse. DMV would need to convince judges that power was not being usurped. Would be difficult because even more power would be usurped. High risk of failure.	Short lead time. Court is already plea bargaining, so no difficulty incorporating treatment. Procedures for diagnosis, referral, and treatment supervision would need to be developed by the court. If no personnel for this presently available, would have to be hired. Forms and procedures would be needed to protect individual rights. Prosecutor and judge and diagnostic supervision personnel would have to be trained in charge reduction process. Low risk of failure.

Figure 5-11
Impact Analysis of Two Intermediate Strategies in an Administrative System

IMPACT AREA		STRATEGY	
		3. Pass law prohibiting plea-bargaining of drunk-driving charges.	4. Make District Courts courts of record to eliminate trial de novo for drunk driving appeals.
LAW GENERATION		Major impact. The state legislature of local governments would have to outlaw plea bargaining for drunk driving. Chances of this are slim. Plea bargaining is thoroughly ingrained in the system.	Legislation would be needed making District Courts courts of record. This is a possibility, because state legislature is currently trying to unify court system. Included in unification plan is proposal to make District Courts courts of record.
ENFORCEMENT/ CASE FINDING		Major impact. Police are strongly opposed to plea bargaining, would strongly support this move. Police would feel that their drunk driving arrests were more effective and arrest rates would probably increase.	Significant impact. Police resent having to appear for a second trial of drunk driving in Superior Court. They would favor making District Courts courts of record and eliminating a second trial. This would possibly result in higher arrest rates.
ADJUDICATION/ DIAGNOSIS		Major impact. Demands for trials probably increase. Without plea bargaining the actual increase in trials would increase dramatically with no increase in trial facilities; backlogs would be long. Large numbers of drunk drivers would be untreated and sanctioned while awaiting trials. Would be an increasing number of appeals and a consequent increase in dismissals in Superior Court.	Major impact. Defense strategy of appeal to get the case dismissed would disappear. Might also reduce the number of trials in District Court, if the defense attorney thought he could not appeal a conviction. Judges would be more likely to convict because they would not be afraid of being overturned in appeal. This would probably not affect jury's reluctance to convict.
SANCTIONS/ REFERRAL/ TREATMENT		Major impact. Referrals to treatment for multiple offenders would not improve and would probably get worse. Defendants in the increased number of appeals dismissed in Superior Court would not get treatment. Those multiple offenders that are convicted would wait a long time before treatment referrals and sanctions could be imposed.	Major impact. Those drunk drivers that were appealing and having their cases dismissed would now be available for referral to treatment and sanctioning.
CONSTRAINTS	FAIRNESS/ HUMANENESS	Significant impact. Large numbers of drunk drivers would be free to drive and drink for long periods of time while awaiting trial.	Possible objections that elimination of trial de novo unfair.
	PUBLIC ATTITUDES	Possibly negative. Public would object to further overcrowding of the court docket with more trials.	Public would probably not have preference.
	COST	Enormous. Trials are the most expensive part of judicial system.	Possibility for significant savings in court time. More administrative costs because there would be increased suspensions for multiple offenders.
	TIME	Enormous. Backlogs would create large spans of time before adjudication.	Considerable savings in time necessary for appeal. Increase in time which court and DMV spend sanctioning convicted drunk drivers.
IMPLEMENTATION REQUIREMENTS		Long lead time. Extensive lobbying necessary to pass law against plea bargaining. Expected objections from state bar association and other organizations. No strong support for the change in the legislature. A certain amount of reeducation of judges and prosecutors would be necessary. Risk of failure: extremely high.	Moderate lead time. At present a bill is pending in the state legislature which would unify the state court system, including making the District Courts courts of record. The chances of its passing are great. Recording machines would need to be put in District Courts, and the court recorders to run them would need to be trained. New procedures would need to be developed on appeals. Risk of failure: low to moderate.

The latter strategy had at first seemed attractive because it would prevent multiple offenders from being diverted from the court's own treatment program. However, it was determined that prohibiting plea bargaining would actually have the opposite effect to that intended. Aware of the Portland, Oregon, experience, the panel feared that more defendants would go to jury trial if they could not receive a plea bargain, making the already "huge" backlog of cases awaiting trial even more huge. The panel was also afraid that the many weak cases that would have to be prosecuted because they could not be plea bargained would "contaminate" jurors who were also hearing stronger cases. Further, the panel anticipated that even more defendants would appeal their convictions, creating a bigger backlog in appeals. Since it was already clear that the superior court did not like hearing drunk driving appeals, it was expected that the number of cases getting "lost" or dismissed would increase, allowing the defendant to avoid sentencing altogether. It was also thought that with such a long wait for trials, the court's chance to invervene early in a defendant's drinking problem would be gone. Finally, the likelihood of passing such a law was almost nonexistent.

Making district courts the courts of record made much more sense. The state legislature was in the process of doing that very thing as a part of the new unified court system. It was expected that within a few months, the problems caused by de novo appeals would be resolved. When appeals were on the record, the panel reasoned that fewer appeals would be taken, and the dismissal of appeals would eventually disappear. It was believed that this would be an effective strategy to ensure that persons who were convicted of drunk driving did not escape the system. This tactic combined with the reduced-charge process, the panel believed, would guarantee that almost all multiple offenders would be subject to some sort of treatment requirment.

SUMMARY

Health/legal system design requires the analysis of change. Such

an analysis will enable you to:

- identify problems in your system that need correcting,
- develop alternative strategies for changing the existing system to make those corrections, and
- select a preferred strategy that can be implemented in a reasonable time for a reasonable cost.

A health/legal system problem has been defined as an inadequate level of system performance, and a set of qualitative criteria for determining the adequacy of a system's performance have been described. The criteria state the critical conditions that must be met in all functional areas for satisfactory operation. The failure of a system to meet these conditions creates a problem that can be corrected only by a change in the system.

Problems in the system are best identified through a systematic analysis of each function and subfunction of the system. Such an analysis will show that a problem in one function is nearly always related to problems in other functions. It will often be found that these "problem chains" have a root cause which, if removed, will improve the performance of the entire system. When the removal of root causes is impractical, solutions for intermediate or derivative problems will be necessary.

There is no magic formula for selecting a strategy for solving problems in a health/legal system. Mostly, it is just a lot of work. The objective is to choose the strategy that will result in the best overall performance and that can meet implementation requirements (for example, time needed to put into practice). Again, the functional analysis approach is a good one. The functional description of the system is used as a surrogate model for testing the expected effects of possible strategies. (A surrogate must be used because we do not yet know enough about health/legal systems to devise a quantitative model for simulating system responses to change strategies.) The functional description is revised to reflect the changes required by each strategy, and the performance and implementation requirements of each revised system are estimated.

Each alternative can thus be rationally considered and the one best suited to a particular jurisdiction selected. The selection process should include representatives from all functional areas so that an informed estimate of the total impact of the change strategy can be made.

These design principles were illustrated by applying them to selected problems in hypothetical health/legal systems that represented each of the four major types of case disposition processes. In a **reduced-charge process**, it was found that reducing the charge to a nonalcohol driving offense meant losing information about prior drinking-driving convictions. A number of problems were derived from this loss, leading ultimately to inappropriate disposition of drunk-driving cases involving multiple offenders. Two strategies were subjected to an in-depth analysis by the hypothetical jurisdiction's Alcohol Safety project Coordinating Committee. A strategy to revise the driver record system so that convictions for reduced charges would indicate the original drunk-driving charge was selected for adoption in the near term, even though it would not improve system performance as much as the other strategy. The other strategy (establishing a two-level drunk-driving offense so that the charge could be reduced to another alcohol driving offense) was selected for later implementation because of the considerable time and effort that would be required to change laws, administrative rules, the state's uniform traffic ticket, and the driver record system.

A hypothetical jurisdiction employing a **probation process** was analyzed to see how a strategy might be selected to deal with a problem chain caused by a new statute requiring a thirty-day mandatory jail sentence for a second drunk-driving conviction within a five-year period. The statute had removed an important inducement (reduced jail time) for convicted drunk drivers to participate in treatment, with the result, again, that drunk driving cases involving multiple offenders were being improperly disposed. Of the several strategies considered to correct this problem, the jurisdiction

decided on a strategy that would change its probation process to reduced charge. The rationale for this choice was that plea bargaining was already being used in the system for some defendants and, with some improvement, could be made to work satisfactorily. Specifically, it would provide the necessary inducement for treatment, could be implemented sooner and more cheaply than alternative strategies, and would not require legislative action.

Two major problems were analyzed in a hypothetical jurisdiction that used a **delayed-sentence case-disposition process**. The first problem grew out of a new statute limiting the amount of time between the conviction and sentencing of drunk drivers, and made it impossible to delay sentence long enough for offenders to complete an intensive treatment regimen before sentencing. This resulted in the same outcome for multiple offenders who needed intensive treatment as seen in the other hypothetical jurisdictions--inappropriate sanctions. A second problem also tended to preclude the imposition of appropriate sanctions for multiple offenders. Because of a lack of funds, convicted drunk drivers were not receiving adequate supervision during their treatment, with the result that many multiple offenders were not complying with the treatment conditions stipulated by the court.

The strategy selected for the first problem was to switch from a delayed-sentence to a suspended-sentence process wherein the sentence could be imposed immediately after conviction and part or all of the punitive sanction suspended upon completion of treatment. For the second problem, the jurisdiction decided to try to organize the diagnosis and supervision function on a statewide basis to be financed by a tax on liquor sales.

The last example of applying our design principles was set in a hypothetical jurisdiction that had just enacted a law establishing an **administrative case-disposition process** for persons convicted of first-offense drunk driving. The new law prevented multiple offenders from participating in treatment programs in exchange for reduced driver's license sanctions. The jurisdiction chose to deal

with the systems problems created by this law by establishing a hybrid process that would retain the administrative process for first offenders and use a reduced-charge process for multiple offenders. The strategy was complemented by a second strategy that would make the trial-level courts that heard drunk drivers cases courts of record. This would eliminate the requirement for appellate court judges to retry appealed cases, a duty they disliked so much that they often just dismissed or "lost" the cases.

The four examples show how the principles of risk management could have been applied to improve the performance of operating health/legal systems in specific jurisdictions. The strategies chosen are not necessarily the best for other jurisdictions with similar problems. The operating environment of a system (especially the statutory environment) will dictate to a large extent the preferred strategy for solving a system problem. Careful, systematic analysis by informed professionals is required to select such a strategy. The professionals best qualified to perform this analysis are those who manage and operate a system. This manual provides information and methods to support this decision-making process rather than specifying the decisions that should be made. Future manuals can provide better information and methods after more jurisdictions have evaluated their programs of change. The next chapter introduces some concepts and considerations that are important to establishing such an evaluation program.

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6
Evaluating Health/Legal Systems

Throughout this manual we have noted the lack of scientific basis for determining the value of the health/legal approach in reducing alcohol-related highway crash losses. Because of this deficiency we have had to concentrate on health/legal activities that are only hypothetically related to the alcohol-crash problem. Moreover, our criteria for "improving" the performance of these activities, by necessity, were subjective, since we had no way of knowing **how** these activities were related to our ultimate crash-loss objectives.

The only way of remedying this very fundamental problem is for jurisdictions to **evaluate** their systems to see what effects, if any, are being realized through what activities. The resulting data from a given jurisdiction obviously will be of value in determining which of its activities have worked and which have not worked. But the data will become even more valuable when combined with those from other jurisdictions that have conducted different activities under different conditions. Such a data pool will enable system designers to know from the outset which activities should be conducted, rather than redoing experiments that already have been performed elsewhere.

In this chapter we briefly introduce some essential concepts and important considerations for evaluating health/legal systems. This material alone will **not** enable you to prepare a detailed evaluation design or to manage an evaluation program. Other manuals have been written for that purpose (Vilardo et al. 1975; U.S. Department of Transportation 1977b). Our main concern here is to identify principles and methods of evaluation as they apply to health/legal systems and to outline what, in general, should be done in an evaluation program. The details of how to conduct an evaluation program are left to other manuals.

ELEMENTS OF AN EVALUATION PROGRAM

Evaluation is a simple concept. It involves comparing what a program actually does with what it set out to do. In evaluation terminology, the effects of a program are measured in relation to its objectives in order to improve future programs. In a word, evaluation is a methodical way of learning from experience.

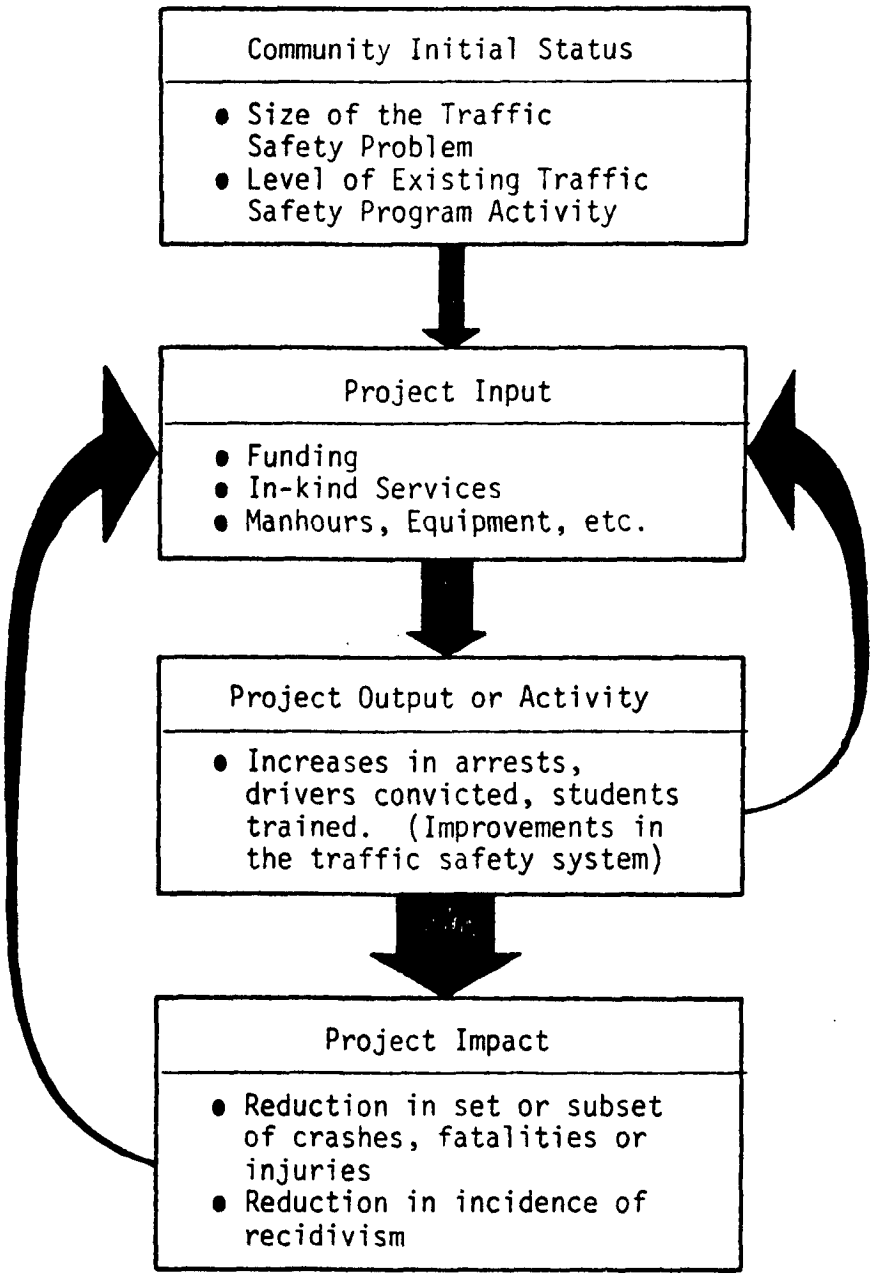
In health/legal systems, one attempts to achieve highway safety objectives by means of a series of intermediate objectives. Previous sections of this manual have described these intermediate objectives in relation to a pyramid of functions and their associated activities. We deliberately used the term "performance" to describe a system's ability to accomplish functional or intermediate objectives, and we identified a series of performance measures and indicators.

In evaluating design changes, we are interested in changes in a system's performance. However, we are even more interested in changes in a system's impact on effectiveness in accomplishing its ultimate highway safety objectives and in understanding the relationship between performance changes and impact changes. We also are interested in the efficiency of a system in achieving its intermediate and ultimate objectives, that is, its performance or impact in relation to the resources that were used in the effort. NHTSA has used the phrase "chain of action" to illustrate the sequence of relationships that ultimately may lead to reduced crash losses (see Figure 6-1).

Thus, an evaluation program for a health/legal system will be concerned with performance evaluation (sometimes called administrative evaluation), with impact evaluation, and with the efficiency of the system. Key elements of such a program will include:

- evaluation design,
- procedures for collecting and using evaluation data, and
- methods for using the evaluation results to improve

Figure 6-1
The "Chain-Of-Action" in
NHTSA Demonstration Projects



Source: U.S. Department of Transportation 1977b.

system operations.

The **evaluation design** is the most important of these elements. Its objective is to provide a scheme for determining the extent to which health/legal system activities, rather than other events and activities, were responsible for observed performance and impacts. The design also identifies data needs for testing hypotheses about causes of observed effects.

Careful **data procedures** are essential for providing needed data in the form specified by the design. The procedures must describe the specific data that are required from particular sources and must identify the ways in which the data will be presented and analyzed.

The main reason for evaluating in the first place is to provide information to health/legal decision-makers for planning future efforts. **Methods for using evaluation results** must be specified at the outset of an evaluation program to ensure that usable results will be available to key personnel.

These three key elements of a health/legal evaluation component are discussed in more detail in the remainder of this section.

DEVELOPING AN EVALUATION DESIGN

To determine the effects of health/legal system changes, an "ideal" evaluation design compares system performance/impact obtained under the changed system to performance/impact obtained under the unchanged system. Any observed changes in system performance/impact may be attributed to the system changes if, and only if, the conditions under which both systems operate are exactly the same.

Obviously, an ideal design can never be achieved under actual operating conditions. No matter how cleverly the design is executed, there will always be some difference between the operating conditions of the original system and those of the changed system. For example, differences may occur in weather, driving patterns, other drunk driving countermeasures, and consumption of alcohol. Whenever a difference exists, there will always be some doubt as to whether the unpredictable differences or the system change was responsible for

the changes in performance or impact. The better the evaluation design, the less doubt there will be about which change caused which effect, but no design can eliminate doubt completely.

An **experimental design** will leave the least doubt about the effects of changes on system results. This amounts to operating two systems at the same time. One system (called the experimental group) includes the changes that are being studied, for example, a new procedure for diagnosing drunk drivers in a probation case-disposition process. The other system (called the control group) remains unchanged. In the example given, convicted drunk drivers would be randomly assigned to the two groups to reduce the chance of biases that might introduce competing hypotheses about causation. The two systems would be allowed to operate for a period of time until enough performance and impact data could be collected for calculating the probability that the observed changes in results were due to the change in system design.

Very often, problems arise in implementing a true experimental design. For example, judges or prosecutors may refuse to assign individuals on a purely random basis because of a belief that such a procedure would violate their right of equal treatment under the law. Also, legislation may explicitly preclude random assignment by stating that all drivers of a certain type (for example, multiple offenders) must be given the opportunity for treatment (see, for example, California State Senate 1978). Thus, a further approximation to an "ideal" evaluation design would become necessary. Such an approximation is called a **quasi-experimental design** by evaluators.

One of the most attractive quasi experiments for evaluating health/legal systems is the time series design. In this method, performance/impact measurements are made periodically, starting before the system changes are introduced and continuing after they have been removed. Patterns or trends in results over time are studied to see if they are different when the old system or the new system is used. A disadvantage of the time series is that it does

not show that the trends are due to the system changes alone. It could be argued, for example, that an observed trend in reduction of alcohol-related fatalities might have been part of a coincident national trend toward less miles driven and that crash losses would have decreased anyway. Great care and skill are required to sift out competing hypotheses about causes of changes in results over time.

It is much more difficult to make unequivocal statements about cause and effect relationships for any kind of quasi-experimental design than it is for experimental designs; thus, you should do everything possible to adopt an experimental design. Any design that introduces more uncertainty about causation should be avoided. An example of such a design is the **ex post facto design,** which employs no control group and manipulates the data after the program is over to "tease out" inferences about causation. The **before-and-after design,** in which measurements are made before and after a project is initiated, introduces similar pitfalls and is generally undesirable for evaluating health/legal systems.

The design of the evaluation will determine the type of data needed for the evaluation, but in general three kinds of data are required:

- data describing the system inputs that will make system changes possible,
- data describing the outputs of the system (i.e., performance and impact), and
- data describing the operation of the system and the environment in which it operates.

Examples of input data for health/legal systems are:

- additional funds for supporting new activities (such as more extensive presentence investigations);
- additional personnel and person hours for performing new activities, for example, alcohol counselors; and
- additional equipment and facilities for the new activities, for example, more office space for conducting presentence investigations.

Output data consist of values of performance measures and input measures. Data for performance measures have already been discussed at length elsewhere in this manual, as have data for describing the system's operations and environment. These data are the same as those that were used first in Chapter 3 in analyzing different types of health/legal systems. The data were specified in more detail in Chapter 4 in identifying data needed for a functional description of a health/legal system. In fact, the input data outlined above can be provided in the course of updating the functional description to reflect changes introduced in the system by the "experiment." Thus an up-to-date functional description provides all necessary data except those that are needed for measuring impact. Such impact data can include:

- number of alcohol-related crashes involving the target group of drivers.
- societal costs of alcohol-related crash losses, and
- data for various surrogate or "proxy" measures of impact when data for the prime measures are unavailable. (For example, NHTSA used the number of nighttime fatal crashes as a proxy measure of the impact of its ASAP effort, because reliable data on the role of alcohol in crashes were unavailable at many ASAP sites. The use of this proxy was reasonable because most alcohol-related fatal crashes occur at night.) (U.S. Department of Transportation 1975a).

The evaluation data outlined above must be provided for both the experimental group and the control group if an experimental design is used. Further, the data must be collected during the period of the experiment as well as for the period immediately before and immediately after the experiment. These data requirements will be fully met by preparing and maintaining the functional description described in Chapter 4 and by collecting additional data on the **impact** of system changes.

COLLECTING AND ANALYZING DATA

From the preceding sections it is clear that an evaluation effort must be carefully planned. Explicit procedures for collecting and analyzing data are a major part of such a plan. The data collection procedures must describe:

- specific data elements to be collected,
- forms and "instruments" to be used,
- sources of data,
- frequency of data collection, and
- responsibilities for data collection.

To a large extent the procedures will be concerned with keeping the system functional description up to date and with extracting specific evaluation data from it. These procedures will have to be more formal than those that you used for acquiring data for the initial functional description. The initial description was used only once for designing system improvements, but evaluation requires repeated measurements of your system's "state" over time. These measurements must be made consistently to ensure that any changes observed are not due to changing methods of measurement. Data collection will be more consistent and accurate if it is coordinated by a single individual who understands the overall evaluation process and who constantly monitors the collection effort to ensure that specified procedures are being followed and that "quality" data are being collected. Personnel who provide data inputs or who collect the data should be thoroughly briefed on their responsibilities.

The final form of the "raw" data collected through these procedures will depend on how you intend to analyze and present it for ultimate use in decision-making. Analysis of impact data requires an individual who can use specialized statistical techniques to make inferences about the causes of observed effects. The evaluator can be a full-time member of health/legal agencies or can be from some other organization. Some analysts believe that "in-house" evaluators may be less objective about outcomes because of a more personal stake in what is being attempted, but even outside

personnel can become wrapped up in the program and lose objectivity. The system coordinator or project director should make a special effort to encourage objectivity whether the evaluator comes from within the evaluating agency or from some other oganization.

Other factors can influence the selection of evaluation personnel, but the most important of these should be their capability to evaluate. Relevant qualifications include a good educational background in applied research in the social sciences, experience in evaluating social systems, and the ability to interact and communicate well with health/legal system personnel.

PRESENTING AND USING EVALUATION RESULTS

The results of your evaluation should be presented in the form of technical and management reports. Such reports should be produced during the course of the evaluation (interim reports) and soon after the end of the experiment. The reports should be coordinated by the health/legal system coordinator or by the project director if you have elected to make your program of change into a formal project. The project evaluator and other key evaluation personnel will play a major role in report writing, but their work should be carefully reviewed by the system coordinator or project director to ensure that it addresses all topics of concern to operational personnel and that the results are presented in a useful form.

A five-part evaluation report has been suggested in a recent NHTSA manual on evaluation (Vilardo et al. 1975). Introductory materials are included in the first part: the name of the project, key personnel in the project, project organization, and sources of funding, if applicable. The second part of the report identifies and discusses the alcohol-crash problem being addressed by the system changes and the specific objectives that are being sought by those changes. The nature of the system changes are also identified explicitly and the types of evaluations being performed are specified.

Part Three of the evaluation report deals with the evaluation of system performance. Measures of performance are presented in graphic

and tabular form and are compared with performance objectives. Performance accomplishments are discussed. Performance efficiency of the system changes also is presented in terms of performance increase per unit cost of system change and of other input measures (for example, increase in person-hours).

Part Four presents the results of the impact evaluation. The material parallels that contained in Part Three, but is concerned with ultimate rather than intermediate effects. Part Four also summarizes methods and procedures that were used in the evaluation design and in collecting and analyzing data.

The overall conclusions and recommendations of the evaluation are presented in Part Five of the evaluation report. Here, the central issues of the evaluation must be addressed clearly and succinctly. An attempt must be made to answer the basic question:

> Did the project achieve what it set out to do, and if so, were the achievements worth the price paid in dollars, time, and effort?

Reasons for successes and failures should be discussed, and unexpected side effects identified. Finally, this part of the report must contain a recommendation about continuing the system changes. Such a recommendation should state whether:

- The changes should be adopted by the operating system.
- Further experimentation should occur if the results were inconclusive.
- The system changes should be further refined and evaluated.
- The system changes should be rejected as being ineffective or not worth the effort.

The evaluation report should be supported by more detailed technical reports that will not be of interest to the general reader. For example, a sophisticated time series analysis of impact measures could be included for future reference. Likewise, a subjective analysis of the possible effects of, say, changes in processing procedures or judicial attitudes also should be documented so that

the reasons for the conclusions will be available long after they might be forgotten. Such permanent records will be valuable to you for improving your own system, to others who have encountered similar problems and might want to try your solution, and to the overall state of knowledge about societal systems and highway safety.

SUMMARY

Design changes in health/legal systems must be evaluated to determine the effects of the changes on functional objectives and on ultimate highway safety objectives. The efficacy of system changes in improving performance and increasing impact also must be known in order to determine whether the changes were worth the effort.

The most important ingredient in a successful evaluation program is a good evaluation design for determining the extent to which changes in the health/legal system brought about the observed changes in performance and impact. An experimental design leaves the least doubt about which factor caused which effect. In this design, the changed system is compared to a system, which is exactly the same as the changed system except for the changes. When a true experimental design is impractical a quasi-experimental design (for example, a time series design) can be used, but will introduce more uncertainty about the causes of observed effects. Less rigorous designs (for example, the ex post facto and the before-and-after designs) should be avoided altogether.

In order to execute any evaluation design, data describing the inputs that changed the system are needed. Such data include amount of additional funds, number of additional personnel, and the amount of additional equipment that were used to make the changes. Data describing the outputs of the system (that is, performance and impact) are also required as are data describing the operation of the system and the environment in which it operates. An up-to-date system description as specified in Chapter 3 will provide all of these data except those for measuring impact. Special provisions must be made for collecting impact data.

These provisions and other data collection and analysis procedures must be explicitly specified in an evaluation plan. The plan must describe needed data elements, forms, data source, frequency of data collection, data analysis methods, and responsibilities for data collection and analysis. Persons with specialized skills are required to execute some parts of the evaluation plan. For example, the analysis of impact data demands someone who understands and can apply specialized statistical techniques. An outside consultant may be needed to supply such services.

Evaluation results should be presented in the form of management and technical reports. The reports should be produced both during and after the period of evaluation. The final evaluation report should describe the nature and organization of the health/legal system, the changes that were evaluated and their objectives, and the evaluation design. The effects of changes on performance, impact, and efficiency should be presented in detail, along with a final assessment of the worth of the changes. Recommendations about continuing the changes as part of a revised health/legal system should be made in the evaluation report. More detailed technical reports should be prepared as needed to document specialized aspects of the evaluations that are of little interest to the general reader. The information presented in these reports will be valuable for improving your own system and for advancing the state of knowledge about health/legal systems and other societal systems that attempt to improve highway safety.

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7
Epilogue

We began this manual by noting how widespread the health/legal approach had become and by stating that much could be learned from jurisdictions that have been using the approach. We briefly summarize here what we ourselves have learned for whatever use it may be to the reader.

First, the health/legal approach is built on the premise that case-finding, diagnosis, and referral to treatment of drunk drivers are appropriate activities for the agencies of our traffic law system and our public health system. One cannot disagree that sick people should be treated, but some scholars have questioned whether it is proper for the legal system to participate in nonlegal modes of rehabilitation (Lewis 1953; Rubin 1968). Our own studies cannot resolve this basic philosophical question but do indicate that the legal system is placing many who need treatment into programs that maintain high professional standards and is doing so in a fair and humane manner. At the same time, the potential for violations of basic human rights does exist and mechanisms are needed for monitoring both legal and health agencies to ensure that such violations do not occur.

Another danger in applying the health/legal approach is that traditional punitive sanctions may be totally replaced with treatment sanctions in instances where punishment or a combination of punishment and treatment may be more appropriate. Research suggests that properly designed legal approaches using traditional sanctions can have a positive effect on the drinking-driving problem (see discussion in Chapter 2). However, the few rigorous evaluations of the effects of treatment programs that have been conducted have not shown direct highway-safety benefits.

Two possible reasons are suggested for this difficulty in showing highway safety benefits. First, the health component of the

health/legal approach requires that individuals to be treated actually be brought into the system after having been apprehended in the act of driving drunk. The exact probability of apprehension for drunk driving in a given jurisdiction is not known, but has been estimated to be quite low, of the order of one chance in 200 (Beitel, Sharp, and Glauz 1975) to one chance in 2000 drunk-driving trips (Borkenstein 1975). This means that an individual who drove drunk four times a week could expect to continue doing so for about one to ten years before being caught. The driver then has to be properly processed and sent to an "appropriate" treatment.

The difficulty of finding and then providing this appropriate treatment is the second reason why it is hard to reduce alcohol-related crashes through a health/legal approach. A recent report to the U.S. Congress on alcohol and health noted:

> Few differences in effectiveness among treatment settings, types, and direction have been identified. The patients' characteristics and motivation may be the essential factors in the recovery process. (Noble 1978, p. 76.)

Effectiveness in this case was stated in terms of alcohol consumption, behavioral effects, and social adjustment. While Noble's conclusion applied only to alcoholics, similar difficulties have been noted in programs dealing with individuals with less severe drinking problems (Jones and Joscelyn 1978). Studies also suggest that treatment programs tend to have a long-term rather than short-term effect on alcohol consumption and behavioral and social impairment of persons with drinking problems. This makes program evaluation more difficult and the identification of appropriate treatments more tenuous.

Nevertheless, program evaluation is key to determining the potential of the health/legal approach and to improving its methods and effects. Jurisdictions should include evaluation components in any new program. Pending the availability of reliable data on the safety impact of the approach, the practitioner should proceed cautiously on the basis of qualitative assessments of the type

outlined in Chapter 5 of this manual.

A final lesson for us was the recognition of the rich diversity and variety of existing health/legal systems. There were so many ingenious solutions to serious operational problems, that one must conclude that just about any problem can be overcome. It appears that efficacy of the health/legal approach is limited more by the methods available for finding and treating drunk drivers than by the ability to design processes for disposing of the cases. The need for research to deal with these very fundamental problems is obvious.

The solution of case-disposition problems must be a cooperative, methodical effort involving all facets of the health/legal system and the environment in which it operates. Systems designs must be carefully fitted to the needs of individual jurisdictions. No single model can be prescribed for all.

We hope this manual will be of some assistance to those individuals who must deal with the daily operations of the nation's health/legal systems. We recognize that it will be their creativity that will lead to improved health/legal systems and a reduction in the risk imposed by the drunk driver.

APPENDIX A

DEVELOPMENT OF DATA FOR DESCRIBING OPERATING HEALTH/LEGAL SYSTEMS

INTRODUCTION

The data used in this manual to describe and analyze current operating health/legal systems in the United States were developed almost entirely during the manual design project. Available documentation of health/legal systems was, with few exceptions, either too general, too old, or in the wrong format for our purposes. Also, none of the literature we had access to presented a comprehensive picture of current health/legal practices nationwide. Former ASAP sites had the best-documented health/legal systems, but the descriptions were not up to date and did not employ a common set of descriptions. Thus, comparison of the systems in any but the most general terms was impossible.

This appendix briefly describes our approach to collecting the needed descriptive data about operating health/legal systems. It also presents some of the data we collected, including summary descriptions of the ten systems that we visited and observed first-hand.

APPROACH

Two types of data collection activities were conducted. First, broad descriptions of health/legal systems attributes were developed through telephone contacts with ASAP and non-ASAP sites. The attributes were generated from our earlier experience with health/legal systems and from system descriptions presented in the literature. The latter dealt primarily with ASAPs that used the health/legal approach and were found almost entirely in reports from NHTSA-sponsored projects. The attributes sought for a given system were:

- population
- geographical location
- general nature of DWI laws
- nature of mandatory sanctions, if any

- type of offenders referred
- method used in processing offenders
- number of cases handled each year
- percentage of cases referred to treatment each year
- performers of health/legal functions
- spectrum of treatment facilities used
- method of financing the operation of the system

Most of the jurisdictions contacted by telephone did not have the quantitative data required to specify some of these attributes (for example, percentage of cases referred to treatment each year) and had to provide subjective estimates instead. The accuracy of these estimates is not known. Other subjective data were also obtsained, for example, degree of support of the system by the public and system staff, and problems that had been encountered in operating the system.

Attempts were made to contact a total of ninety-one sites by telephone. These included all ASAP sites except Puerto Rico (thirty-four sites) and fifty non-ASAP sites identified by taking a stratified random sample of U.S. cities having a population of 50,000 or more. In addition, seven non-ASAP sites were suggested by our contract technical manager and were also contacted. A list of the eighty-six sites that were contacted and provided useful data is presented in Figure A-1. Three randomly selected sites and two former ASAP sites (Seattle and Tampa) were either unable to provide the information we sought or could not be reached.

The second type of data collection activity supported the preparation of a series of more detailed case studies of ten "representative" systems. These data were collected through on-site discussions with key health/legal system staff who included police officers, judges, prosecutors, defense attorneys, divers's license personnel, treatment agency staff, probation officers, etc. The data collected were of the type specified in Section 4.0 of this manual, but were generally less detailed. At one site, Washtenaw County, very detailed descriptive data were collected to determine the feasibility of the procedure set forth in Section 4.0 for developing

Figure A-1
Sites Contacted by Telephone

Former ASAPs

1. Albuquerque, New Mexico
2. Baltimore, Maryland
3. Boston, Massachusetts
4. Charlotte, North Carolina
5. Cincinnati, Ohio
6. Columbus, Georgia
7. State of Delaware
8. Denver, Colorado
9. Fairfax County, Virginia
10. Hennepin County, Minnesota
11. State of Idaho
12. Indianapolis, Indiana
13. Kansas City, Missouri
14. Lincoln, Nebraska
15. Los Angeles, California
16. State of Maine
17. Marathon and Sheboygon Counties, Wisconsin
18. Multnomah County, Oregon
19. Nassau County, New York
20. State of New Hampshire
21. New Orleans, Louisiana
22. Oklahoma City, Oklahoma
23. Phoenix, Arizona
24. Pulaski County, Arkansas
25. Richland County, South Carolina
26. Salt Lake City, Utah
27. San Antonio, Texas
28. Sioux City, Iowa
29. State of South Dakota
30. State of Vermont
31. Washtenaw County, Michigan
32. Wichita, Kansas

Non-ASAPs

1. Allentown, Pennsylvania
*2. Athens, Ohio
3. Baton Rouge, Louisiana
4. Billings, Montana
5. Buffalo, New York
6. Canton, Ohio
7. Columbus, Ohio
8. Corpus Christi, Texas
9. Davenport, Iowa
*10. Dayton, Ohio
11. Dearborn, Michigan
12. Des Moines, Iowa
13. Duluth, Minnesota
14. El Paso, Texas
15. Evansville, Indiana
16. Fayetteville, North Carolina
17. Galveston, Texas
18. Gary, Indiana
19. Glendale, California
20. Great Falls, Montana
21. Greenville, South Carolina
22. Jacksonville, Florida
23. Jersey City, New Jersey
24. La Crosse, Wisconsin
*25. Lafayette, Louisiana
26. Lake Charles, Louisiana
27. Lansing, Michigan
28. Laredo, Texas
29. Lexington, Kentucky
30. Livonia, Michigan
31. Mansfield, Ohio
*32. Memphis, Tennessee
33. Miami, Florida
34. Midland, Texas
*35. State of Missippi
36. Mobile, Alabama
37. Nashua, New Hampshire
38. New Haven, Connecticut
39. Omaha, Nebraska
40. Oshkosh, Wisconsin
*41. Park Forest, Illinois
42. Pasadena, California
43. Pittsburgh, Pennsylvania
44. Roanoke, Virginia
45. Roseville, Michigan
*46. Sacramento, California
47. San Jose, California
48. St. Louis, Missouri
49. Southfield, Michigan
50. Stockton, California
51. Taylor, Michigan
52. Tulsa, Oklohoma
53. Winston Salem, North Carolina
54. Youngstown, Ohio

*suggested by CTM

such a description. Data collection guides of the types illustrated in Appendix B were used in collecting the data.

Three general criteria were used for selecting the case study sites. The first of these was that the selected sites be as representative as possible for jurisdictions that have formalized health/legal systems and are now operating nationwide. The second criterion was that the selected jurisdictions have fairly high referral rates, i.e., greater than seventy-five percent if possible, and that they have a genuine interest in the health/legal approach. The third general criterion was that there be persons at the selected sites who were knowledgeable about the evolution of their system, who could provide access to descriptive data about their system, and who would cooperate with the project staff in developing the case studies.

Data collected in the telephone contacts provided the main basis for determining which sites met these criteria. The attributes of the systems described through the telephone contacts were arrayed in the matrix for analysis by the project staff. Selection was accomplished through an iterative process which continued until all of the criteria were met. The resulting set of ten sites should thus be considered as a feasible, though not necessarily optimal, solution to the site selection problem. Other combinations of sites also could have been selected. The sites selected were:

1. Washtenaw County, Michigan
2. Phoenix, Arizona
3. State of Maine
4. Pulaski County, Arkansas
5. Multnomah County, Oregon
6. Lafayette, Louisiana
7. Greenville, South Carolina
8. State of Washington
9. Park Forest, Illinois
10. Columbus, Ohio

The first five sites are former ASAP sites. Figure A-2 indicates the range of attribute values represented by the selected sites and

Figure A-2
Range of Attribute Values for
Sites Selected for Case Studies

Attribute	Range of Values
Population	45,000 - 582,000
Geographical Location	north, south, east, west
Drunk Driving Laws/ Sanctions	presumptive, per se, 1-tier, 2-tier, preliminary breath test, mandatory and discretionary jail/ license suspension, restricted license, prohibited plea bargaining
Type Offenders	first, multiple
Type System	probationary, earned charge reduction, delayed sentence, suspended sentence, administrative
Volume of Cases/ Referral Rates	high (required under Criterion two)
Performers of H/L Functions	probation officers, alcohol counselors, treatment personnel, DMV personnel, judges
Spectrum of Treatment Used	moderate, broad
Method of Financing	general tax base, fee, fine, special fund
Data availability/ Cooperation	high (required under Criterion three)

shows the diversity that exists among the sites. The range of values covers that found in our telephone contacts of ASAPs and non-ASAPs.

RESULTS

The results of the telephone contacts were summarized for each jurisdiction and presented in a common format showing the attributes of the jurisdiction's health/legal system (see Figure A-3). These summaries, plus other impressions and insights gained during the telephone discussions, were of major importance to the descriptions and analyses used in the manual. They provided a basis for developing a descriptive structure (that is, a taxonomy) for classifying health/legal systems and for identifying "representative" sites for more in-depth study.

The aggregated data from the telephone contacts show that there was no statistically significant difference between ASAP and non-ASAP jurisdictions with respect to:

- type of case disposition process,
- percentage of cases said to be referred to treatment,
- existence of mandatory sanctions,
- type of offender handled,
- organization that diagnoses and refers drunk drivers,
- organization that supervises the treatment of drunk drivers, or
- range of treatment modilities that are available.

Time and project resources did not permit comparisons of ASAPs and non-ASAPs with respect to other attributes.

The telephone contacts indicate that the most common primary case disposition process used by cities of 50,000 population or more is probation. Forty-three percent of such cities use probation as their only case disposition process or as the primary pure process in a hybrid process. Reduced-sentence and reduced-charge processes were the next most frequent, accounting for twenty-three percent and twenty-one percent respectively of all primary case disposition processes. The administrative process was the least common with

Figure A-3
Example of Summary Presentation of Information
Collected in a Telephone Contact

1. Jurisdiction: Lafayette, Louisiana
2. Population: 69,000
3. General nature of drunk driving laws: One level with a presumptive limit of .10% w/v. No per se law.
4. Nature of mandatory sanctions: One-year suspension of driver's license and 125 days in jail for second offense drunk driving. Judge may suspend all or part of the jail sentence.
5. Types of offenders referred to treatment: First and multiple offenders.
6. Type of case disposition process: Hybrid with suspended sentence for defendants who have not been through the system before, and probation for those who have. All drunk drivers who have not previously been through the program are given a presentence investigation after conviction. The presentence period, usually three weeks, includes a diagnostic interview and eight to ten hours of basic alcohol education classes. The defendant then comes back to court and is sentenced based on the recommendation of the presentence investigator, a contractor of the court. If no further treatment is recommended, the defendant will be placed on one-year unsupervised probation. If further treatment is recommended, first offenders are placed on informal court probation for one year and required to attend treatment. They are supervised by an alcohol counselor. Multiple offenders attend treatment after being placed on formal state probation. Multiple offenders are supervised by a state probation officer.

   For defendants who have already participated in the program, the judge will normally sentence the defendant to jail and suspend a portion of the sentence contingent upon the defendant's seeking treatment recommended by the presentence investigator.
7. Number of cases handled by case disposition process in a year: 1300 (estimated).
8. Percent of cases referred to treatment: Nearly 100 percent (estimated).
9. Performers of health/legal functions: Diagnosis and referral--court contracted presentence investigator.
10. Treatment modalities available: An eight-to-ten hour alcohol school and an A.A.-oriented court sobriety program. Referrals are also made to local alcohol abuse center with a moderate range of treatment modalities.
11. Method of financing: Revenue from the general tax base, state and local.

thirteen percent of primary processes.

The average percentage of drunk driving cases referred to treatment was sixty-eight percent. Eighty-three percent of the jurisdictions referred at least half of their drunk driving cases to treatment. Note that the referral percentages were estimated subjectively in most jurisdictions contacted.

Most jurisdictions (fifty-seven percent) contacted by telephone did not have any truly mandatory sanctions, either in the form of driver's license actions or jail sentences. In these jurisdictions, mandatory sanctions could be circumvented by suspending sentences, issuing restricted driver's licenses, allowing defendants to retain their license on the condition that they enter a treatment program, etc.

Nearly all jurisdictions referred both first offenders and multiple offenders to treatment. Those that did not (eighteen percent) were equally divided as to whether they referred only first offenders or only multiple offenders.

The telephone contacts showed that in thirty-six percent of the jurisdictions, probation personnel diagnosed and referred drunk drivers to treatment. Judges performed these two functions in thirty-one percent of the jurisdictions, and other court personnel (for example, alcohol counselors) performed diagnosis and referral in sixteen percent of the jurisdictions.

Nineteen percent of those contacted said that personnel from treatment agencies diagnosed and referred defendants. The same percentage (nineteen percent) said that personnel from other noncourt agencies (for example, a university) did the diagnosis and referral. Note that these categories are not matually exclusive, that is, in some jurisdictions, diagnosis and referral were performed by personnel from more than one agency.

Probation personnel were said to supervise treatment in sixty percent of the jurisdictions contacted by telephone. Other court personnel were treatment supervisors in fifteen percent of the jurisdictions. Twenty-eight percent said treatment agency personnel

did the supervising, and other noncourt personnel supervised treatment in eighteen percent of the jurisdictions. Again, these categories are not mutually exclusive.

Finally, the jurisidctions contacted by telephone were just about equally divided in regard to the range of treatment modalities offered. Thirty-one percent indicated that they had a "narrow" range of modalities, thirty-four percent had a "moderate" range, and thirty-five percent had a "broad" range of modalities available for use by their health/legal system.

The results of the case studies that were developed through site visits are detailed and are best understood by reading the case summaries (attached). A summary of some important attributes of these health/legal systems is shown in Figure A-4.

SUMMARY

Comprehensive system descriptions, presented in a consistent format, were needed as a data base for this manual. A lack of such descriptions made it necessary to collect additional data during this project.

Ninety-one jurisdictions were contacted by telephone to provide a synopsis of key attributes of health/legal systems nationwide. The contacts revealed no statistically significant differences between former ASAP sites and non-ASAPs with respect to several critical attributes. The contacts were also used to develop a taxonomy of health/legal systems which served as a basis for selecting ten systems for further analysis through case studies.

The results of the telephone contacts and the case studies are used throughout the manual in describing health/legal systems, the conditions under which various types of systems are most likely to be found, and the performance of different kinds of systems in accomplishing objectives that appear to be related to highway safety. Methods for analyzing problems in health/legal systems and selecting strategies for solving problems were also developed from this data base.

Figure A-4
Summary of Attributes of H/L Systems
Visited by Project Staff

JURISDICTION	SIZE	TYPE OFFENDER	TYPE SYSTEM		LEVELS OF OFFENSES/ NATURE OF BAC EVIDENCE	MANDATORY SANCTIONS	H/L PERFORMERS		RANGE OF TREATMENT FACILITIES USED	METHOD OF FINANCING
			PRIMARY	SECONDARY			DIAGNOSIS & REFERRAL	SUPERVISION		
WASHTENAW CO.	234,000	ALL	PROB.	ECR	2/PRES.	DWAI: NO LIC. DUI: FLEXIBLE	PROB./ COUNS.	PROB.	BROAD	TAX, FEE, FINE
PHOENIX	582,000	ALL	ECR (1ST)	PROB. (MULT.)	1/PRES.	JAIL	PROB./ COUNS.	PROB./ COUNS.	BROAD	TAX, FEE
PULASKI CO.	287,000	ALL	SUSP. SENT.	DELAYED SENT.	1/PRES.	LIC.*	TREAT.	PROB./ TREAT.	MODERATE	TAX, FEE, FUND
MULTNOMAH CO.	557,000	ALL	PROB.	SUSP. SENT.	1/PER SE+	LIC.* (MULT.)	PROB./ TREAT.	PROB.	MODERATE	TAX, FEE, FUND
STATE OF MAINE	---	ALL	ADMIN.	--	1/PRES.◇	LIC.	TREAT.	TREAT.	MODERATE	TAX, FEE
COLUMBUS, OH	540,000	ALL	PROB.	SUSP. SENT.	1/PRES.	LIC.* JAIL	TREAT./ JUDGE/ PROB.	TREAT./ JUDGE/ PROB.	BROAD	TAX, FINE
PARK FOREST, IL	45,000	ALL	ECR	--	1/PRES.	LIC.*	TREAT.	TREAT.	BROAD	FEE, FINE
STATE OF WASHINGTON	---	ALL	ADMIN. (MULT.)	PROB./ SUSP. SENT. (ALL)	1/PRES.	LIC.*	TREAT.	TREAT./ DMV/ PROB.	MODERATE	TAX, FEE, FUND
LAFAYETTE, LA	69,000	ALL	SUSP. SENT. (1ST)	PROB. (2nd)	1/PRES.	LIC.* JAIL* (MULT.)	COUNS.	COUNS./ PROB.	MODERATE	TAX, FEE, FUND
GREENVILLE, SC	61,400	ALL	ADMIN. (1ST)	PROB. (MULT.)	1/PRES.	LIC.	COUNS./ JUDGE	COUNS./ JUDGE	MODERATE	TAX, FEE, FUND

*Conditional
+No Plea Bargaining
◇Preliminary Breath Test

ABBREVIATIONS/DEFINITIONS USED IN FIGURE A-4

PROB: Probation
ECR: Earned Charge Reduction
SUSP. SENT.: Suspended Sentence
ADMIN.: Administrative
DELAYED SENT.: Delayed Sentence
1ST: First Offense
2ND: Second Offense
MULT: Multiple Offense
PRES.: Presumptive
DWAI: Driving While Ability Impaired
DUI: Driving Under the Influence
LIC.: License Suspension or Revocation
COUNS.: Counselor
TREAT.: Treatment
DMV: Department of Motor Vehicles
FUND: Specially Designated Account With Funds From Liquor Tax, etc.
TAX: Funds From General Tax Base, No Special Account For Drunk Drivers
FINE: Funds From Court Fines
FEE: Funds From A Fee Assessed From Participants In Program

CASE STUDY SUMMARY FOR
WASHTENAW COUNTY, MICHIGAN

THE HEALTH/LEGAL SYSTEM

The Court System

Michigan is one of a minority of states that defines two degrees of legally punishable drunk driving. The major offense is commonly referred to as Driving Under the Influence of Liquor (DUIL). There is a presumptive limit of .10% w/v for DUIL. A DUIL charged first or second offense is a misdemeanor while a DUIL charged third offense is a felony. Michigan's second degree of drinking and driving is Driving While Ability Impaired (DWAI), commonly referred to as Impaired Driving. There is a presumptive level of .07% w/v and all impaired driving offenses are misdemeanors.

Both of the major cities within Washtenaw, Ann Arbor and Ypsilanti, have local ordinances proscribing DUIL and impaired driving. These ordinances are substantially similar to the state statutes and are usually used in place of the state statute for drunk driving arrests made by the two cities' respective police agencies. Arrests made by the county sheriff, state police, or other police agencies are charged under the state statute.

Michigan has a unified court system under the supervision of the Michigan Supreme Court. All criminal misdemeanors including drunk driving offenses are heard in district court, the statewide court of limited jurisdiction. Within Washtenaw County there are two district courts. The 15th District Court is located in Ann Arbor, the major city in Washtenaw County, and hears drunk driving offenses committed within the city limits. The 14th District Court serves the remainder of the county including Ypsilanti and other smaller towns.

The circuit court is the court of general jurisdiction. All of Washtenaw County is served by the 22nd Judicial Circuit. All felonies, including DUIL third offense, will be heard there after a

preliminary hearing in district court if the defendant so requests.

All district and circuit courts in Washtenaw County permit a jury trial for DUIL and impaired driving. Both courts are courts of record. Appeals of DUIL or impaired driving in district court are heard on the record in circuit court. An appeal of a DUIL third, originally heard in circuit court, is heard on the record in the Michigan Court of Appeals.

The Driver Licensing System

The authority to suspend the driver's license of a convicted DUIL offender is vested in the sentencing judge. At the time of sentencing, the court will take the license and send it, along with notice of a specified period of suspension, to the secretary of state (SOS). The SOS holds the license for the period of suspension and returns it at the end of the period if there are no other suspensions or revocations in effect at that time.

The vesting of the suspension authority in the sentencing judge is a new provision in Michigan law, in effect since April 1977. Previously, the secretary of state had the sole authority to suspend a convicted DUIL's license after receiving notice of conviction from the court.

Sanctions Imposed on a Driver Convicted of DUIL or Impaired Driving

Court imposed sanctions for conviction of DUIL include a fine and jail. Both are discretionary to the sentencing judge. A conviction of first offense DUIL carries a possible ninety days in jail or a $100 fine or both. For second offense DUIL, the possible penalties are one year in jail or a $1000 fine or both. For conviction of third or subsequent offense DUIL as charged, the judge may impose a period of up to four years in the state prison. In practice, very few drivers will be convicted of DUIL third offense. In most instances, where DUIL third is originally charged, it will later be reduced through plea bargaining to a first or second offense.

For conviction of impaired driving imposition of a fine and jail are also discretionary to the sentencing judge. For conviction of a first-offense impaired driving the possible penalties are 90 days in jail or a $100 fine or both. Conviction of second-offense impaired driving carries with it a possible one year in jail or a $1000 fine or both. When assessing a fine for conviction of either DUIL or impaired driving, the sentencing judge may also impose reasonable court costs.

As mentioned previously, since April 1977, the sentencing judge is also responsible for imposing the license suspension of conviction of DUIL. The judge is required to order the secretary of state to suspend the license for any period of time up to two years. In addition, the court may order the secretary of state to issue a restricted license allowing the defendant to drive to and from work and in the course of employment for the period of the suspension. The secretary of state may impose additional suspensions or revocations based on grounds other than the conviction of DUIL (e.g., excessive points on the driving record, habitual offenders). These suspensions or revocations would be in addition to the court-imposed suspension. There is no mandatory suspension requirement for conviction of impaired driving.

The Health System

Treatment facilities available to the convicted drunk driver in Washtenaw County include:

Alcohol Abuse Prevention Program. Provides alcohol education programs and group counseling and limited one-to-one counseling.

Washtenaw Council on Alcoholism. Essentially a competitor of Alcohol Abuse Prevention Program; provides same services but probably has a greater ability to perform individual counseling.

Beyer Hospital Alcohol Program. Provides outpatient group therapy and inpatient services for patients of the

hospital. This program is designed for a serious problem drinker and advocates total abstinence as a prerequisite for entry into its program.

Riverview Clinic. Provides outpatient group therapy and psychiatric care.

15th District Court Antabuse Clinic. This program, funded by the 15th District Court, serves two functions. First, it serves as a monitoring device for those people required by the court to take antabuse. In the last few years the number of people taking antabuse has dropped dramatically, so that currently, less then twenty people are taking the medication at any one time. This drop has largely been a result of the realization by the court that antabuse has little or no effect on an unmotivated client. The second and more important function of the clinic is to provide a group therapy session for a particular class of persons. The clinic is located in a lower income area and is within walking distance of Ann Arbor's less affluent population. Many lower income clients who do not have the transportation or who would have difficulty adapting to the middle class atmosphere of other agencies, have shown marked improvement in their drinking patterns after involvement at the clinic.

Dawn Farm. Provides inpatient therapy for young adults addicted to both alcohol and drugs. Requires at least a six-month commitment.

Chelsea Hospital. Provides a detoxification facility for serious alcoholics and a limited inpatient program (two weeks).

Alcoholics Anonymous. An effective form of therapy for the right type of client, the local chapter of AA is extremely active, providing therapy and social activities for the alcoholic and his family.

THE HEALTH/LEGAL PROCESS

Within Washtenaw County there are two district courts handling drunk driving offenses. They are completely separate with some differences in their operations. The 15th District Court will be discussed in detail. Then, where significant differences exist in the procedures of the 14th District Court, these will be noted.

The 15th District Court

The 15th District Court serves the city of Ann Arbor. Any arrests for drunk driving made within the city limits are heard in this court. While most arrests in Ann Arbor are made by the city police, the Washtenaw County Sheriff and the Michigan State Police on rare occassions will make arrests within the city limits. In 1977, the Ann Arbor Police Department made 338 arrests for DUIL.

After stopping a vehicle for irregular driving behavior or any other valid reason, the police officer's decision to arrest the driver for DUIL is based on observations. This may include how readily the driver produces his license and registration, any odor of intoxicants coming from the driver or the vehicle or his performance of coordination tests performed at the side of the road. All arrests will be made for the more serious of Michigan's two drunk driving offenses DUIL. If the prosecutor later feels that the case does not warrant the charge of DUIL he may reduce the charge to impaired driving.

Once the decision to arrest is made and the required rights are given, the driver is brought to the police station. There he is viewed by "the officer on duty." It is felt important by the Ann Arbor Police Department that this be done first, to confirm that the suspect has been treated properly, and second, to confirm that there are proper grounds for arrest. After observation by the officer on duty, all DUIL suspects are given opportunity to take a breath test. The driver is advised of his rights concerning blood alcohol testing

and the consequences of refusal to submit to a test. If the driver accepts, two breath tests are given as a matter of course, with more given if the two ratings vary more than .02% w/v. After the breath tests are given, the driver may request to be taken to a hospital for a blood test. This happens very infrequently. From the time of arrest until both breath tests have been given, the average elapsed time is an hour and a half.

After taking the blood alcohol tests, the driver is given the opportunity to post bond. The police are liberal about accepting interim bonds because the Washtenaw County jail is often full. Generally a bond of $100 is required. However, a spokesman for the Ann Arbor Police reports that on some occasions less is accepted. While the breath testing and bonding procedure is taking place, the arresting officer fills out the arrest report and other relevant forms. The whole arrest procedure takes from two to two and a half hours.

Before the appearance of the driver in court for arraignment, a complaint and warrant against the driver is authorized by an Ann Arbor city attorney. In almost all cases the authorization will be for DUIL, however, the city attorney may authorize a charge of impaired driving if the evidence warrants (BAC below .10% w/v).

When the defendant appears in 15th District Court for arraignment, he is informed of the charges against him by a district judge and given the opportunity to plead guilty or not guilty. If the defendant wants time to consult an attorney, frequently the arraignment will be adjourned to allow him time to do so. If he pleads guilty he is referred to the probation department for a presentence interview, which will be discussed later. If he pleads not guilty a pretrial hearing is set.

The purpose of the pretrial hearing is to give the city attorney an opportunity to determine which cases he will try. Because there are many more people charged with DUIL than could reasonably be tried in front of a judge or jury, most cases will be plea bargained at the pretrial stage. The decision by the city attorney as to which cases

to reduce by plea bargain and which cases to try is a subjective one, taking into account such factors as previous record, BAC, whether there was a traffic accident involved in the case, and the defendant's attitude. In general, it can be stated that the prosecutor will be more likely to plea bargain a weak evidential case or one involving a driver with no bad driving history or high BAC.

There are two primary results of a plea bargain for a DUIL. First, the city attorney will agree to reduce the charge to impaired driving. The defendant then agrees to plead guilty to the reduced charge and the adjudication process is completed. An immediate reduction to impaired driving is generally offered to defendants with no prior record or a BAC of less than .15% w/v. Second, the city attorney may grant the "Plea Under Advisement" program. Any defendant allowed this program pleads guilty to the original DUIL with the agreement that it will be reduced to impaired driving upon completion of any requirements set forth by the probation department or the secretary of state's driver analyst. This procedure will be set forth in more detail later. The city attorney's staff typically use the program to plea bargain those cases that they do not want to take to trial yet do not think merit an immediate reduction to impaired driving. These types of cases could include defendants with prior records or high BACs.

Reductions of DUILs to any offense other than impaired driving are rare. Infrequently one may be reduced to careless or reckless driving, but this is very rare. City attornies are pleased about Michigan's law defining two levels of alcohol/driving offenses. They feel that by reducing the DUIL to impaired driving the defendant is not getting off too easily. He still has an alcohol/driving offense on his record and the penalties are essentially the same except for the driving sanctions.

For those cases that go to trial, the trial can be by judge or jury. Statistics are not available on the number of jury and judge trials for DUIL, but it appears that more jury trials are held. Jury trials generally require one complete working day to try, and the

amount of time involved in preparation by the city attorney will vary depending on the number of witnesses involved. Trials by a judge typically take two hours to conduct with about the same amount of preparation necessary as in a jury trial. The trial, whether by judge or jury, is usually held about six weeks after the pretrial hearing. Since district courts are courts of record, any appeal of a DUIL conviction is made on the record. As a result, very few DUIL convictions are appealed.

Whether the defendant pleads guilty to an alcohol-related offense at arraignment or pretrial, or is found guilty at trial, his sentencing date is usually set four to six weeks in the future to allow him to report to the 15th District Court Probation Department for a presentence investigation. An investigation consists of a personal interview with the defendant and a check of his previous record. Further interviews may be held with friends, employers, or family members if the case warrants. The purpose of the interview is to obtain sufficient information about the person's life and drinking habits to help the judge impose an appropriate sentence. After obtaining this information, the probation officer compiles a one- to two-page presentence report including recommendations for treatment. If the probation officer is unsure of what to do after the interview, he may require the defendant to have an additional interview with the 15th District Court consulting psychiatrist.

At the end of the presentence interview the probation officer will inform the defendant of the type of recommendation that he will make to the judge. The defendant will then be referred to treatment. Referral to a particular treatment facility is a subjective decision by the probation officer based on the severity of the defendant's drinking problem, the proximity to various treatment facilities, and the probation officer's perception of how the defendant would relate to a particular therapist. In practically no case would a defendant not be referred to some sort of alcohol education or treatment.

One important aspect of the presentence period is that the defendant is requested to become involved in treatment before he

returns to court for sentencing (usually about three weeks from the date of the interview). This requirement serves two purposes. First, it allows the defendant to ascertain whether he really wants to accept the court requirement that he participate in treatment as a condition of probation. In almost every case the defendant accepts the treatment because the alternatives are perceived to be worse. Second, it is important, especially for the abusive drinker, that he become involved in treatment as soon as possible. Not only are the chances of success in treatment enhanced if the defendant begins immediately after conviction, but it helps to ensure that an abusive drinker, who may still be driving, is at least receiving some sort of treatment to deal with the problem.

For those defendants participating in the Plea Under Advisement program, an additional interview is held with a driver analyst of the secretary of state. The analyst will determine what, if any, treatment the defendant has been asked to attend. The analyst will usually rubber stamp the court's referrals, although he is free to make his own if he deems necessary. In some instances the driver analyst may restrict or suspend the license, although this is almost never done with first offenders. The analyst prepares his report and sends it to the probation officer.

The presentence report and analyst's report, if any, are submitted by the probation officer and orally discussed with the judge, usually the day before sentencing. The entire process of presentence investigation takes about two hours per defendant including the time necessary to prepare reports. The interview usually occurs two to three weeks after conviction and several weeks before sentencing. In some limited instances a defendant will be convicted, interviewed, and sentenced the same day, but in almost all cases this is limited to nonresidents of Washtenaw County who would have difficulty coming back on several occasions.

When the defendant returns to court for sentencing, the sanctions are imposed. In addition to a fine and, in some limited circumstances, jail, almost all defendants are placed on probation to

participate in the treatment they have already begun. The Plea Under Advisement program has one minor procedural difference. For all intents and purposes it is identical to regular probation, but because the plea is being held under advisement by the judge until treatment is completed, the defendant cannot legally be sentenced and placed on probation. To remedy this, the period of time given a Plea Under Advisement participant to complete treatment (usually six months) is termed **presentence probation.**

After being placed on probation or the Plea Under Advisement program the defendant's participation is supervised by the same probation officer who performed the presentence investigation. The average case load for a probation officer is 200 clients.

If at any time during the term of probation the defendant is not fulfilling his requirements, the probation officer may take a variety of actions. Initially, personal contact with the probationer, either by letter or phone or in person, will be used to ensure compliance. If that does not work, the probation officer may request the judge to order a show-cause hearing at which the defendant must appear in order to explain why he has not complied with his probation.

The ultimate action of the probation officer is a request for the judge to violate the defendant's probation. If a violation occurs, a bench warrant is issued to bring the defendant to court for a hearing on the violation. If the defendant is found guilty at the hearing, the judge may impose the original sentence, reinstate the probation, or terminate him altogether from any further obligation to the court. The most typical outcome is reinstatement on probation with costs assessed for violation of probation. For a Plea Under Advisement participant, the most frequent outcome is loss of the opportunity to plead guilty to the reduced charge.

When the probation officer determines that the defendant has satisfactorily completed probation, he petitions the court for a termination of probation. The termination procedure is not necessary for Plea Under Advisement participants, for before they will recieve a charge reduction, they must appear before the judge and satisfy him

that they have completed the requirements.

The 14th District Court

In their overall operations, the 14th and 15th District Courts are similar. There are, however, several differences worth discussing.

There are some minor differences in arrest procedures used by police agencies in Washtenaw County other than the Ann Arbor Police Department. The Ypsilanti Police Department will not release a driver on bond until eight hours after the arrest, primarily to make sure he has an opportunity to sober up. Further, the Ypsilanti police will not give an interim bond unless the person can post $100. Another minor difference in arrest procedures involves the use of the officer on duty to review an arrest. The Washtenaw County Sheriff's office has a policy against this in the belief that if the officer on the scene has grounds to make the arrest, only he knows that for sure, and no one should try to second guess him.

There is a significant difference between the 14th and 15th District Courts in their use of Plea Under Advisement program. In the 14th district it is termed the Driver Improvement Program and the criteria for its use are different. It is used only as a program for first offenders and, for the most part, has replaced an immediate reduction to impaired driving. In addition, in the 14th district, the reduction to impaired driving occurs as soon as the defendant returns to court after seeing the probation department and the driver analyst. He is then placed on probation to participate in the recommended treatment program. This is significantly different than the 15th district's policy of requiring treatment completion before the reduction is granted.

The last major difference between the two courts involves their procedures for diagnosing and referring defendants to treatment. Two of the four 14th district judges will not use the probation department to conduct presentence investigations. Instead, they refer the defendants to the Alcohol Abuse Presention Program, a local alcohol education and treatment agency. There a counselor will

conduct the PSI and make his recommendations directly to the judge at a presentence conference. If the defendant is placed on probation, the 14th District Court Probation Department assumes supervision at that point. One member of the probation department states that it is fortunate that such a split system exists. He states that if the two judges who are presently referring to the treatment counselors for PSIs were to refer directly to the probation department, the department would be unable to handle the increased case load. It appears then that the fragmented approach to diagnosis and referral in the 14th District is working smoothly.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

The first organized attempt in Washtenaw County at establishing a health/legal system was begun in 1969 in the 15th District Court. A district court judge in cooperation with the director of the Washtenaw Council on Alcoholism (WCA) and a local physician developed an antabuse program for selected offenders. Under this program, the judge would refer the clients and WCA would provide alcohol counseling and administer Antabuse. Use of this program was limited only to the most chronic offenders until 1970, when it was incorporated into a proposal to the U.S. Department of Transportation for a federally funded ASAP. The proposal expanded the Antabuse program making both 14th and 15th District Courts responsible for diagnosing and referring alcohol offenders to the WCA for treatment involving therapy and Antabuse. The proposal was accepted and Washtenaw County became one of the nine original ASAP demonstration projects.

The period of the federal ASAP marked a tremendous increase in the use of the health/legal concept in Washtenaw County. Arrests increased by fifty to seventy-five percent with the selective enforcement component of the ASAP.

Along with the increased enforcement activity came the requirement that all convicted drivers be diagnosed in terms of their drinking

patterns and referred to appropriate treatment modalities. The 14th and 15th District Courts accomplished this slightly differently.

In the 15th District Court, all convicted drunk drivers were interviewed by a court counselor whose office was located in the 15th District Court, but funded by the federal ASAP. The diagnostic procedures were similar to those in use today. Since Antabuse was a cornerstone of the program, large numbers of defendants were asked to take it. Supervision was provided by a probation officer whose office was located in the 15th District Court but was funded by the federal ASAP. The supervision procedures were much the same as those in use today.

The 14th District Court was also active in the diagnosis of most of its drunk drivers, although its procedures were somewhat different. Judges in the 14th District Court would refer drunk drivers directly to the ASAP offices where they would be interviewed by an ASAP counselor. The counselor would file a presentence report with the judge and, if treatment was recommended, the defendant would be placed on probation and assigned two probation supervisors. A probation officer from the traditional probation department was assigned to handle the administrative duties and to collect any fines and costs, and an ASAP "probation officer" was assigned to make sure that the defendant participated in treatment. This system created some confusion, especially in its early stages. Defendants were confused and angry about having to report to two people and personality conflicts existed between some ASAP and probation department personnel. As a result, cooperation was difficult to establish. Nevertheless, most of the supervision problems had been resolved by the time the ASAP ended in 1973.

There is considerable concern as to why the dual probation officer system had developed in the first place. The 15th District had one probation officer placed in the court with ASAP funds and that procedure seemed to work much more smoothly. The answer appears to be that in the beginning stages of the ASAP, when procedures were being developed for both courts, the 14th District Probation

Department was never included in the planning. As a result, it was never integrated into the system.

In addition to the establishment of new health/legal procedures. The ASAP was also the major reason for the development of alcohol treatment and educational resources. The WCA, the major provider of treatment and education, flourished during the ASAP. Because of the large number of court clients being channeled into treatment, other programs began to develop, including alcohol programs at local hospitals and several residential programs.

When the ASAP ended in 1973, perhaps the biggest change occurred in enforcement of drunk driving. All of the police agencies that participated in the ASAP selective enforcement program reported significant decreases in DUIL arrests.

The procedures for diagnosing and referring clients to treatment which had been put into motion by the ASAP continued to function. The ASAP was assumed by the Washtenaw County Health Department and became known as the Alcohol Abuse Prevention Program. It continued to provide diagnostic services for the courts and also began developing alcohol treatment and education programs similar to the WCA. In the 15th District Court, the ASAP court counselors and probation officers were put on the city payroll and the procedures described in today's system have developed. In the 14th District, today's procedures evolved because two of the judges continued to use the diagnostic services provided by the Alcohol Abuse Prevention program while the other two judges began using their own probation department again. No judge, however, stopped using the health/legal approach completely.

The biggest change in the sanctioning process to occur since the end of the ASAP was the introduction of the Plea Under Advisement Program in late 1975 (and later the Driver Improvement Program in 14th District Court). Envisioned by the court as a way to motivate entry into and completion of treatment, it has been very successful to that end. Since under the terms of the Plea Under Advisement Program the defendant does not get the benefit of the reduced charge

until he completes his treatment program, the defendant is more likely to follow through on his treatment than if he were given the reduced charge and then asked to participate in treatment. While no statistics are available comparing the completion of treatment by those persons in the Plea Under Advisement Program and those in regular probation, the judges in the 15th District Court believe that the Plea Under Advisement Program is more effective than regular probation in motivating defendants to complete treatment without additional court intervention.

A problem with the Plea Under Advisement Program in the 15th District Court has been a difference in philosophies about who is eligible for the program. The program was first introduced to the judges and city attorney of the 15th District Court by the supervisor of the Hearing Section of the Bureau of Driver Improvement, Michigan Department of State. Based on a program he had seen in Tampa, Florida, he envisioned the program as a cooperative effort between the courts and the Secretary of State's Office to identify and refer to alcohol education those drivers who had never been picked up for drunk driving before. Because he did not foresee that it would be used for multiple offenders, he did not expect license suspension to be an issue in the program. As was mentioned previously however, the 15th District Court applied the program almost as a "third offense" between Impaired Driving and DUIL in the plea bargaining process. Thus, defendants with previous records or higher BACs were being offered the Plea Under Advisement Program rather than Impaired Driving in the plea bargaining process with the mistaken impression that they were sure to retain their license. When the defendant went for his interview with the Secretary of State's Office, his license was suspended if his record was bad. Since this was not a part of the understanding of the plea bargain it created some conflict between the court and the Secretary of State's Office. These cases did not happen often and were handled on a case-by-case basis by the court, usually with the recommendation that the defendant appeal the secretary of state's action to circuit court. The problem still

arises today very infrequently, although the court is now aware before granting the Plea Under Advisement that the Secretary of State's Office may take action on the license.

INSIGHTS AND IMPRESSIONS

- The 15th District Court's "early intervention" technique is worth noting. Normally, a probation approach that allows for presentence investigation fails at getting the defendant into treatment at an early stage of the process. This is primarily because a defendant is not required to enter treatment until after the presentence investigation and return to court for sentencing. By requiring the defendant to enter treatment during the presentence investigation period, the length of time before treatment is begun is shortened by an average of three to four weeks. This of course, is still not as early as is possible in reduced charge processes.
- Within Washtenaw County there are two separate legal systems sharing the same health resources. The 14th and 15th District Courts are completely separate entities with their own facilities including their own probation departments. They share the same treatment and education agencies and have their own working arrangements with the various health agencies.
- There was a great deal of difficulty in establishing effective supervision procedures in the 14th District during the ASAP. Dual supervision by a court probation officer and an ASAP probation officer caused friction between the two agencies. As personnel in both agencies came to know each other better, the problems began to be resolved. Many people within Washtenaw County's health/legal system feel the reason for this was not including the 14th District Court Probation Department in the planning phases of the ASAP.
- The 15th District Court was aided considerably in its evolution by the presence of an influential and interested judge. He was responsible for setting up the ASAP procedure in his court in the first place and was influential in the city's decision to incorporate

the program into its budget after the federal ASAP ended in 1973.

- The federal ASAP appeared to be a major factor in the development of an effective and sophisticated health/legal system in Washtenaw County. While there was certainly interest before the ASAP, it provided the funds for setting the machinery in place. Much of what was established was retained after the federal funds ended.

CASE STUDY SUMMARY FOR
PHOENIX, ARIZONA

THE HEALTH/LEGAL SYSTEM

The Court System

Driving While Intoxicated (DWI) offenses occurring in the city of Phoenix are heard in the Phoenix Municipal Court. A court of limited jurisdiction, the municipal court hears the following types of cases:

- state statute violations, which are classified as misdemeanors;
- city ordinance violations;
- civil cases within the authority conferred by the Phoenix city charter.

Within the state of Arizona there are also justice of the peace courts, which have concurrent jurisdiction with the municipal court over DWIs. There are no justice of the peace courts in Phoenix.

All DWIs filed in the municipal court, are charged under the statewide DWI statute. The Phoenix City Council has not enacted any local DWI ordinances.

All persons charged with DWI have the right to a jury trial in Phoenix Municipal Court. Appeals of DWI convictions in municipal court are heard in the Maricopa County Superior Court, the countywide court of general jurisdiction. Since July 1975, the municipal court has been a court of record and, as a result, all appeals from municipal court are heard on the record. Prior to 1975, when appeals from municipal court were heard de novo in superior court, it was a common defense bar tactic to appeal DWI convictions in municipal court.

The Driver Licensing System

The authority to issue, suspend, or revoke a convicted DWI's

driver's license is vested in the Arizona Department of Motor Vehicles (DMV). The DMV's authority over the driver's license is absolute with the exception of a first offense of DWI within a two-year period. In first offense cases, the sentencing judge has concurrent authority to recommend a period of license suspension.

The DMV will take action upon the license as soon as it receives notice of conviction of DWI from the court. In cases where license revocation is mandatory the license may be taken by the judge at sentencing and forwarded to the DMV along with the notice of conviction.

Sanctions Imposed on a Convicted DWI

Court-imposed sanctions for conviction of DWI include a fine and jail term. The permissible limits of each are as follows:

- A DWI conviction with no previous convictions within two years requires a mandatory jail term of one day to a maximum of six months and allows a discretionary fine of $100 to $1,000. The language of the statute is specific in not allowing the judge to suspend the mandatory one-day minimum jail sentence. The statute also authorizes the judge to impose up to three years probation.
- Second or subsequent DWI convictions within a two-year period requires a jail term of sixty days to six months and allows a fine of $1,000. Again the language of the statute is specific about the inability of the judge to suspend the jail term, and his authority to impose up to three years probation.

Suspension or revocation of the driver's license is a major sanction against a convicted DWI. The authority to suspend the license of a DWI without any DWI convictions within the preceding two years is held by the sentencing judge. The sentencing judge may recommend to the DMV that the license be suspended for a period of up to six months. For second or subsequent offenders, the DMV has

absolute authority over the license. Upon receiving notice of the conviction from the court, the DMV must revoke the license for a minimum period of one year.

The Health System

There is a wide range of treatment facilities within the Phoenix area to which convicted DWIs may be referred. The most widely used are the programs offered by the Rehabilitation-Probation (R-P) Center, a division of the municipal court. The R-P center provides a complete range of treatment modalities designed for the drinking driver. These programs are:

- Educational Series - designed for persons who are diagnosed as social drinkers or preproblem drinkers, this program is essentially an alcohol education program. There are two 2 1/2 hour sessions held over a one week period, plus three to five hours of individual study.
- Countermeasure Program - designed for persons diagnosed as midrange problem drinkers. Operated by local treatment agencies under contract to the city, the program consists of ten 2 1/2 hour sessions held over a five week period.
- Special Assessment and Referral (SAR) - is a program designed for getting serious problem drinkers and alcoholics into treatment. An in-depth interview is held and then a referral to an appropriate treatment agency is made. SAR is also used in cases where the defendant lives outside of the Phoenix area to refer him to a treatment program in his community.

In addition to the R-P center programs there are a range of alcohol treatment programs available in the Phoenix area, including Alcoholics Anonymous, inpatient rehabilitation programs, and detoxification.

THE HEALTH/LEGAL PROCESS

The decision to arrest for DWI begins when a police officer makes a valid traffic stop. After observation, if the police officer suspects that the driver is "under the influence" he will require the driver to perform coordination tests to determine impairment. If the officer decides that the driver is under the influence he arrests him and transports him to the police station where the driver is given the opportunity to take a breath test. After administration of the breath test, the routine procedures of fingerprinting, photographing, and completion of the necessary arrest reports are completed. A release decision is then made. If there are no outstanding warrants against the driver and he has a way home, the police will release the driver on his own recognizance. If he is not elibigle for recognizance, he is held in jail until his arraignment the next day. If the driver is released on recognizance, he is required to appear for arraignment within four to ten days of the date of arrest.

When the defendant appears at arraignment he is informed by the judge of the DWI charge against him and is given an opportunity to enter a plea of guilty or not guilty to the offense. At this point one or two procedures will be used. If the defendant is eligible, he is informed of the PACT Program (Prosecution Alternative to Court Trial), a prosecutor-based pretrial diversion program. If he is not eligible for PACT, normal adjudication procedures are followed. A discussion of the PACT process is followed by a description of the procedures used for a driver who is not eligible for PACT.

PACT

All DWI defendants who have not participated in PACT before are eligible for the program. When PACT was initiated in 1974, all DWIs were eligible for PACT if they had not been through it within the previous two years. This was changed however to the present eligibility requirement because, as one municipal court judge said, "one bite of the apple" was enough.

When an eligible defendant appears at arraignment, the PACT program is explained briefly and the defendant is asked to enter a plea to the DWI. The defendant must enter a not guilty plea to participate in PACT. Virtually everybody who is offered the PACT program agrees to it and enters a not guilty plea. In fact some judges will not accept a guilty plea from someone who has not been through PACT before.

Once the PACT-eligible defendant has pleaded not guilty, the judge sets a date for a pretrial conference, called a "PACT court session," two to three weeks from the arraignment date.

The defendant is also instructed that a "PACT Orientation Session" will be held immediately preceding his return to court for the PACT court session. The PACT orientation is held in the R-P center, a division of the municipal court.

Several days before the defendant is due to appear for the PACT orientation, the PACT prosecutor reviews the case file and determines the charge to which the DWI will be reduced and the fine that will be assessed if the defendant participates in PACT. This determination is commonly called the "PACT offer."

The criteria for deciding the PACT offer are essentially two:

- the breath test reading (if any), and
- the presence of any major "back-ups" or additional traffic charges against the defendant.

According to the PACT prosecutor, if the BAC is between .10 and .15% w/v, and there are no major back-ups or priors, the defendant will be offered a traffic offense that carries only three points on the driving record as the reduced charge and a $112 fine. If the BAC is above .15% w/v with no major back-ups or priors, the offer consists of a five-point traffic offense and a $112 fine. If there is a major back-up present, the defendant is offered a reduction to that charge. In rare instances in which the BAC is below .10% w/v, the prosecutor will make his recommendation based on his assessment of the strength of the case. The usual offer in these instances is a zero-point traffic offense and a $55 fine.

Once the PACT offer has been determined, it is transmitted to the PACT orientation officer in time for the defendant's appareance there. At the PACT orientation the defendant initially fills out an alcohol screening test and views a slide presentation explaining the different alcohol rehabilitation programs. While the slide show is going a PACT "case coordinator" determines the results of the screening test. After the slide show, each defendant is interviewed by a case coordinator. The case coordinator uses the results of the interview and the screening test to determine an appropriate treatment modality.

The case coordinator explains to the defendant the prosecutor's PACT offer and the treatment modality, which he must attend if he is to obtain the offer. If the defendant agrees to participate in PACT he signs the PACT agreement form, embodying the terms of the program (a sample copy is found on the last page of this case summary). Virtually every defendant who is offered PACT accepts, since the opportunity to have the DWI reduced to a lesser charge is an overwhelming incentive. For the rare defendant who rejects the PACT offer, the normal adjudication procedures are followed.

After the PACT agreement has been discussed, all defendants return to court for the PACT court session. For those defendants who have accepted the PACT program and signed the agreement (virtually everyone) the judge acknowledges the terms of the agreement and affirms a "final court disposition" date, previously set by PACT personnel. The disposition date varies with the rehabilitation program assigned, but is often six to eight weeks in the future. For the rare defendant who does not accept PACT, a trial date is scheduled for the DWI.

Before the defendant returns to court for the final disposition, he must complete the rehabilitation requirement. The treatment to which he is assigned will always be one of the three programs offered by the R-P center (described in The Health System). There is an $80 program service fee for all treatments. The case coordinator supervises the defendant's progress in the program. If the defendant

has not completed the required treatment before the final disposition date, the case coordinator will notify the prosecutor. The prosecutor will then usually set the defendant's case for "problem disposition." Here the defendant will explain his inability to complete treatment to the judge. The judge determines whether to cancel the PACT agreement and proceed to trial in the DWI or to give the defendant more time to complete the program. Normally, in cases of program noncompliance, the judge will reset disposition once or twice before deciding to set the case for trial. There is a standard provision in the PACT agreement form, which is signed by the defendant, waiving his right to a speedy trial. Thus, any continuances by the judge do not deny the defendant this right.

When the defendant returns to court with the rehabilitation program completed, final sentencing takes place. At this time, the judge formally accepts the plea of guilty or no contest to the agreed-upon lesser charge and assesses the fine. If indicated by the PACT agreement, the judge may place the defendant on probation after completion of PACT. The defendant is then supervised by a probation officer at the R-P center and may be required to participate in a further treatment program.

The vast majority of DWIs in Phoenix Municipal Court are eligible for the PACT program. Current estimates by the PACT prosecutor are that ninety percent of all DWIs are eligible for the program. He does expect, however, that this number will gradually drop, since once a DWI has participated PACT he is not eligible again. The administrator of the R-P center, which conducts the PACT orientation session, estimates that around 6,000 DWIs went through the PACT orientation program in 1977.

Traditional Court Procedures

Those defendants who have been through PACT before are handled by traditional court procedures. If the defendant pleads not guilty at arraignment, a pretrial disposition conference (PDC) is scheduled. At the pretrial the prosecutor makes a standard plea offer to all

defendants who are not eligible for PACT. If the defendant does not have a DWI within the preceding two years and pleads guilty to the DWI, the prosecutor will agree to a one-year probation and the mandatory one day in jail. For the defendant that has a DWI within the previous two years, the prosecutor's offer is usually probation and thirty to forty-five days in jail if the defendant pleads guilty to first offense DWI. A spokesman for the prosecutor's office says it is extremely rare that a defendant who is not eligible for PACT will be offered a reduced charge less than DWI. He states that each prosecutor must justify any DWI reduction to lesser charges based on evidential weaknesses in the case.

If the defendant accepts the prosecutor's offer, he pleads guilty at that point and is referred to the probation department. If he does not accept the offer, the case is set for trial. A spokesman for the prosecutor's office reports that about two-thirds to three-fourths of all DWI trials end with a verdict of guilty.

Once the defendant has either been found or pled guilty, he is referred to probation for diagnosis of his drinking patterns and involvement in a treatment program. In a limited number of instances, the judge will adjourn sentencing until a presentence investigation is performed by the probation department. This procedure is rare however. The more common procedure is that the judge sentences the defendant at the time that he pleads or is found guilty and places him on probation with instructions to report to the probation department and participate in whatever treatment program probation finds necessary. In some cases, however, the defendant is fined or jailed or both without probation.

When the defendant appears for his initial probation appointment he is given the alcohol screening test and a personal interview. Based on the diagnostic test and the interview the probation officer decides where he will assign the defendant for treatment. The probation officer has a good deal of leeway in his treatment assignment decision. He may refer to any of the treatment modalities offered by the R-P center, or he may refer the defendant to various

treatment programs located in the Phoenix area.

Once the defendant is referred to a treatment program, supervision is performed by the probation officer. According to a spokesman for the probation department, the defendant is given six months to complete the required treatment program. After six months, the defendant becomes "accountable" to the probation officer if treatment is not completed. If there appears to be a valid reason for not finishing treatment, the probation officer may allow the defendant more time. If the probation officer finds no acceptable reason for failure to complete the treatment he may request a hearing for violation of probation. The request goes through the prosecutor who makes the final decision on whether to request a probation violation hearing. If the prosecutor feels a violation is justified, he requests the judge to schedule a hearing. At the hearing the defendant may explain any reasons he has for failure to complete the conditions of his probation. The judge may terminate probation or he may reinstate the defendant in probation with the provision that he satisfy the remaining probation conditions. If the defendant fails to appear for the probation violation hearing a bench warrant is issued by the judge. The bench warrant will remain in effect until the defendant is arrested by the police. The police do not aggressively pursue bench warrants, but most defendants with bench warrants will eventually be picked up as a consequence of a record check or another violation.

Once the defendant has satisfactorily completed the conditions of his probation, including treatment, and served the probation term, he is terminated from probation.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

The following is a brief summary of the processes that have developed for dealing with DWIs in the Phoenix Municipal Court. This court has been in the vanguard of innovative programs for dealing with DWI offenders since 1967. As a result, it has been the subject

of a number of publications describing its procedures. One such publication by Palmer (1976a) contains an extensive history of the development of the DWI procedures used by the Phoenix Municipal Court.

The first organized attempt at establishing a health/legal system in Phoenix City Court occurred in 1966 when a local judge collaborated with two professors at Arizona State University to develop an educational program for those persons convicted of DWI. Called DWI School, the program was one of the first of its kind and gained a good deal of national recognition. The program consisted of four two and one-half hour sessions containing lectures, group discussions and films on alcohol and highway safety. It became the model upon which many similar programs throughout the country were based.

When the federally funded Alcohol Safety Action Program was developed in the early 1970s, Phoenix applied for and received one of the grants, using the DWI school as a basis for its project. The federal ASAP funds allowed the DWI school to expand its program and add supplemental counseling programs for those clients identified as problem drinkers. During the period of the ASAP it became standard procedure for all DWIs to attend the DWI school.

In mid-1974 the DWI school was discontinued primarily because, as a result of the ASAP evaluations, it appeared that it was not having a real effect on DWI rearrest rates. In April 1975, the Rehabilitation-Probation (R-P) Center was established as a division of the city court. One of the functions of the R-P center was to provide a series of alcohol treatment programs designed to take the place of the DWI school. The treatment programs consisted of prevention and therapy workshops and a Power Motivation Training group. For the three-quarters of its operation clients were randomly assigned to the various treatment modalities at the R-P center in an effort to evaluate the effectiveness of each program. In 1976, after the results of the evaluation had shown that none of the treatment programs could be termed a "success" in preventing rearrests for DWI (a recent study by Nichols et al. (1978) found power motivation to

have a negative effect on highway safety), power motivation was dropped and the present treatment programs developed.

In addition to the treatment programs, the procedures for getting a DWI from the Phoenix Municipal Court to a treatment program underwent an evolutionary process. Originally, a delayed-sentence approach was used to make sure that a defendant would attend the DWI school. Under this approach, a DWI would be referred to the DWI school after conviction and would be required to complete treatment before being sentenced. This procedure was changed in 1972 to a probation approach for two primary reasons. First, court personnel felt that the delayed sentence approach lacked the clout of probation. According to an evaluator of the Phoenix ASAP, the percentage of defendants failing to complete court-mandated treatment programs dropped from twenty-five to thirty percent down to ten percent. Second, with new constitutional requirements for speedy trials, delayed sentencing to allow the defendant to complete a treatment program caused concern to many judges. The probation approach that was adopted in 1972 is substantially similar to that in use today for those defendants not eligible for PACT.

Clearly, the greatest change in adjudicative procedures took place when PACT was introduced in 1974.

During the several years preceding PACT, the backlog of DWI trials had increased so dramatically that the city cout was unable to process effectively its large caseload of DWIs. Three major reasons are given for the development of the backlog. First, an integral part of the Phoenix ASAP was a vigorous selective enforcement component. Arrests for DWI during the ASAP period were almost double what they were during any preceding year. All of these arrests had to be processed by the municipal court. Second, with the U.S. Supreme Court's ruling that legal counsel was required for indigents in criminal cases where incarceration was an outcome of conviction, counsel had to be provided for DWI defendants. With counsel representing so many DWIs, the requests for trials increased tremendously. Third, a change in the Arizona DWI statute required an

unsuspendable jail term of one day for conviction of DWI. With this sort of penalty at stake, many DWIs were taking the case to trial rather than pleading to the DWI.

As a result of the tremendous backlog in DWI cases awaiting trial, the city prosecutor was forced to plea bargain a large number of DWIs to lesser offenses. Recognizing that widespread plea bargaining of DWIs was going on anyway, an assistant prosecutor developed the PACT concept. His view was that if plea bargaining was going to occur, then it should be systematized and treatment should be required as a condition of the plea bargain.

The PACT concept was developed and became part of the city court's procedures in 1974. Although there was some initial objection to such a wholesale plea-bargaining process, the PACT program has gained the enthusiastic support of nearly everyone in the Phoenix city government and the municipal court. It has proven to be an effective procedure for reducing the crippling backlog of DWI cases and at the same time ensuring that DWIs will systematically be referred to alcohol treatment and education programs.

A final step in the evolutionary process of the municipal court adjudication procedures occurred in 1975. Through legislation passed by the Arizona State Legislature in 1974, the municipal court was able to implement a court reporter system that allowed for the recording of city court trials. Before 1975, all appeals of municipal court trials were heard de novo in superior court, and it was a common defense tactic to appeal a municipal court verdict to delay the process further. With the court reporter system, all appeals of municipal court proceedings were "on the record." This change dramatically reduced the number of appeals of DWI cases in superior court.

CASE STUDY SUMMARY FOR MULTNOMAH COUNTY
(PORTLAND), OREGON

THE HEALTH/LEGAL SYSTEM

The Court System

The court system in the state of Oregon consists of a Supreme Court and a Court of Appeals, on the appellate level. At the trial level, the court of general jurisdiction is the circuit court and the court of limited jurisdiction is the district court. In some areas of the state, municipal courts have been created by city charter. In areas of the state where there is not enough population to justify a district court, justice courts exist. Driving under the influence of intoxicants (DUII) offenses are heard in either district court, municipal court, or justice court, depending on the location of the arrest and the arresting police agency. In Portland, there are no municipal courts or justice courts; therefore, all DUIIs there are heard in district court.

Both circuit and district courts are courts of record. There is, at the present time, an absolute right to a jury trial for any DUII offense charged. Any appeal of a DUII heard in district court goes directly to the court of appeals, and is appealed on the record. Municipal courts and justice courts are not courts of record, and any appeal from either of these courts goes to circuit court and is heard do novo. In recent years, there have been a higher number of appeals, due in large part to some recent innovative DUII legislation.

The most innovative piece of DUII legislation occurred in 1976. Primarily because of a huge backlog in DUII jury trials, the legislature made first offense DUII, in most instances, a traffic infraction rather than a traffic crime. In instances where first offense DUII was preceded by another major traffic offense conviction within five years of the DUII, the DUII could be charged as a traffic crime. Major traffic offenses include driving while suspended,

reckless driving, attempt to elude and hit and run, as well DUII. The number of first offense DUIIs eligible to be charged as traffic crimes, however, was quite small.

When charged as an infraction, there is no jail sentence for conviction of DUII. It was the intent of the legislature that by not authorizing a jail sentence, jury trials could be done away with for DUII infractions, and the large backlog of DUII jury trials could be reduced. The denial of a jury trial was appealed shortly thereafter and recently the Supreme Court of Oregon decided that all of the protections afforded to the traffic crime must also be afforded to the traffic infraction. They held that the DUII infraction retained too many of the features of a crime and as a result, it still exists, but there is no difference procedurally between it and a traffic crime.

During the time that the appeal was being decided, it was routine practice by the defense bar to request a jury trial for a DUII infraction, knowing that the case would be put in limbo pending the outcome of the appeal. This resulted in an even greater backlog of DUII jury trials than before the infraction went into effect.

DUIIs with a prior major traffic offense within five years are Class A misdemeanors and are traffic crimes. There is no felony DUII in the state of Oregon. The state of Oregon by statute does not allow plea bargaining in any DUII offense. Most DUIIs, after requesting a trial, will end up pleading to the DUII on or before the day of trial.

The Driver Licensing System

The authority to issue, suspend, or revoke the driver's livense is vested in the Oregon Department of Motor Vehicles (DMV).

The DMV will take action on a DUII's license when it receives notice of conviction from the court. The DMV's authority to suspend or revoke a convicted DUII's license is exclusive with respect to multiple offenders. The authority to suspend the DUII first offender's license, both traffic infractions and crimes, is vested in

the sentencing judge. The limits of either the DMV's or the judge's authority to suspend or revoke the license are discussed in the following section.

Sanctions Imposed on the Convicted DUII

Court imposed sanctions for conviction of DUII include:

- First offense DUII--traffic infraction--the court may impose a maximum fine of $1,000 and may order the Department of Motor Vehicles to suspend the driver's license for a period of up to one year. In practice, the driver's license will not be suspended unless the driver's traffic record is not good.
- First offense DUII--a traffic crime--the court may impose a maximum fine of $1,000 and one year in jail. Both are discretionary. The court may also order the DMV to suspend the driver's license for up to one year. The DMV may suspend the license without the order of the court for two major traffic crimes within five years. This is often done, since the defendant charged with a first offense DUII traffic crime, by definition, already has a major traffic conviction within five years previous to the present offense.
- Multiple offense DUII--the court may impose a maximum fine of $1,000 and a jail term of up to one year. Both are discretionary. Jail time is not often imposed, as the prevailing philosophy among judges in Portland is that a jail term by itself is of no value. Jail time is sometimes used in conjunction with a probation term requiring alcohol treatment. The court has no power to suspend a DUII multiple offender's license.

The DMV, upon receiving notice of conviction of a multiple offense DUII, will suspend the driver's license for the following periods of time:

- Second DUII conviction within five years--a mandatory one-year suspension.
- Third or subsequent DUII conviction within five years--a mandatory three-year suspension.

A conditional license is available for any suspension or revocation of the driver's license for DUII. The driver must submit himself to an evaluation by an alcohol treatment agency approved by the Oregon Mental Health Division. If he is found to have a drinking problem, he must become actively involved in a treatment program and be making progress. After the evaluation, the treatment agency notifies the DMV and the court of its recommendation concerning the eligibility of the driver for the conditional license. Both the court and the DMV will almost automatically accept the treatment agency's recommendations. Since the conditional license provision has been in effect, active participation in antabuse therapy has been required by the certifying treatment agency on a regular basis.

The Health System

In Portland, there are three major treatment agencies that provide alcohol treatment services to the court:

- The Alcohol Safety Action Program--ASAP evolved from the federally funded ASAP in Multnomah County during 1971-74. In addition to doing alcohol evaluations for many of the court's DUII offenders, it also provides treatment services to those clients whom it evaluates for the court. In the past its treatment philosophy was based heavily on the use of monitored Antabuse. According to the director of the ASAP, about sixty percent of their court-referred clients take Antabuse on a regular basis, monitored at local pharmacies. Until recently, relatively little counseling was done in conjunction with the use of Antabuse. ASAP is now in the process of developing ongoing one-to-one counseling for a significant portion of the time that

the client is taking Antabuse. Those clients who do not receive Antabuse will also receive a significant period of counseling.

The ASAP program is currently undergoing a change in its organizational structure. Until 1978, the ASAP was part of the State Mental Health Division and received its entire funding from the state, primarily State 402 funds. The state has recently decided to divest itself of control over local treatment agencies with the idea that counties are better able to coordinate their own treatment programs. Rather than become a part of Multnomah County, the ASAP has recently become a private nonprofit corporation that contracts with Multnomah County to provide alcohol treatment services. The funds for the contracts come from the same sources as when the ASAP was part of the state, but now the money is routed through the county before it comes to the ASAP. The ASAP, in addition to its funding, charges fees for evaluation and treatment with a sliding scale, based on ability to pay.

The ASAP is one of three treatment agencies within Multnomah County, approved by the Mental Health Division to perform evaluations for the purpose of obtaining a conditional license.

- Alcohol Treatment and Training Program (AT&T)--the AT&T provides alcohol treatment for a small number of court-referred clients. It is currently negotiating with the district court probation departments to establish a more formal referral mechanism. Its orientation is one-to-one counseling.

The AT&T resembles the ASAP in its organizational structure. It, too, will contract with Multnomah County to provide alcohol treatment services. Because of the training aspect of its program, however, it

will become a part of the University of Oregon Medical School instead of incorporating. The AT&T is also approved by the Mental Health Division to certify DUIIs for conditional licenses.

- Project STOP--this agency provides both evaluation and treatment services for the client referred to it by the court. At the present time the court-referred clients are split approximately in half between ASAP and Project STOP. Project STOP has a group orientation to its treatment programs. It uses antabuse, but apparently not as extensively as ASAP. While not aligned with Alcoholics Anonymous, Project STOP frequently uses AA as a treatment modality and referral source.

  Project STOP is funded by a combination of community grants and client fees, based on ability to pay. It is approved by the Mental health Division, to certify DUIIs for conditional licenses.

An alcohol education program is operated by the district court. The court contracts with local counselors to provide a four-week program on the effects of alcohol on the body and driving. The court refers clients directly to the alcohol education school, which reports directly back to the judge on attendance. There is no evaluation done on defendants sent to the alcohol education program. The school is financed through the courts with a $5 fee charged to everybody attending the program. It instructs about 2,000 persons per year.

THE HEALTH/LEGAL PROCESS

The decision to arrest a driver for DUII is made by the police officer based on observations of the driver and his performance of coordination tests. After a record check is performed by calling back to the station house, the driver is placed under arrest. He

will be cited for an infraction if a record check indicates no major traffic convictions within the last five years. If the record check is positive he will be cited for a traffic crime. All infractions automatically receive personal recognizance. The assistant court administrator estimates that seventy-five percent of all DUII arrests made in the city of Portland are cited as infractions.

Those drivers cited for a DUII infraction are transported to the station house and given the opportunity to take a breath test. After the requisite arrest reports have been completed, the driver will be released with a copy of the ticket and notice of his arraignment date. A spokesman for the Multnomah County Sheriff describes an interesting procedure that is used to relieve crowded conditions at the station house. The officer determines whether the driver wishes to take the breath test at the scene of the arrest, and if the driver refuses he will be released on recognizance at the scene of the arrest with a ticket and notice of his date to appear in court for arraignment. The number of DUII arrests in which this procedure is used appears to be quite small.

If a driver is arrested for a traffic crime (first offense DUII or multiple offenses), he is taken back to the station house. There he will take the breath test if he chooses to do so and the arrest records will be completed. As a general rule, DUIIs charged as traffic crimes will not be given recognizance. They will be lodged in jail until arraignment the next morning. If somebody is willing to come to the station to pick up the driver, however, he usually will be released on recognizance.

DUIIs in Portland are prosecuted on a uniform traffic citation. As a result, there is no screening process through the district attorney's office before a DUII is charged. Neither is the district attorney present when the driver appears in court for arraignment.

At arraignment the defendant is advised by the judge of the charges against him and his rights. He is then given the opportunity to enter a plea. In most instances the defendant will either ask for time to consult an attorney, or for a court-appointed attorney. If

he is already represented by an attorney, he will request a trial. Those who seek time to consult an attorney will almost always request a trial at a later date. It is estimated by the assistant court administrator that only twenty percent of the defendants will plead guilty at arraignment.

If a defendant requests a trial, notice is sent to the district attorney's office which puts together a case file, including the police report, a copy of the ticket, and other material associated with the arrest. Each file is reviewed by a district attorney several months before trial to get a preliminary notion of the work needing to be done. Although very rarely done, if a case has such weak facts that there is no way it could be proven, the supervising district attorney will move the court to dismiss the case at that point.

Since plea bargaining for DUII offenses is prohibited by statute in Oregon, all DUIIs either plead guilty before going to trial, or actually take the case to trial. The percentage of DUIIs going to trial is very small, estimated by officials within the court system at around ten percent. Most plead guilty at or before the time of trial. Many DUIIs who end up pleading guilty wait until the day of trial to decide whether to plead. Often they delay to see which judge they will get or whether witnesses will show up in court. Waiting until trial to plead guilty is also sometimes a dilatory tactic used by the defense attorney to allow his client to keep his driver's license for as long as possible. At present, the earliest that a DUII can be brought to trial is six months from the date of arraignment.

If a DUII case goes to trial, it is estimated the chances of conviction at jury trial are about fifty percent. Those that go to bench trial appear to have a greater chance of conviction. A typical jury trial takes three-fourth to one day, while a typical bench trial lasts one-half to one hour.

After conviction or plea, the decision to require a DUI to seek treatment or alcohol education depends entirely on which of thirteen

judges is hearing the case. The procedures for first offense DUIIs are significantly different from DUII multiple offenders, so the two groups will be described separately.

DUII First Offenders. First offenders, whether with traffic infractions or crimes, are rarely required to receive an alcohol evaluation. While several judges simply assess a fine, many judges require that a first offender attend the alcohol education school as a condition of sentence. Attendance at the alcohol education school is reported to the judge by the school. The judges enforce any requirement that DUII go to the school.

In rare instances, usually in which the defendant or his attorney asks for help, the judge will require a first offender to receive an alcohol evaluation. The procedures are the same as for a multiple offender and will be discussed next.

DUII Multiple Offenders. A large percentage of multiple offenders are required to receive an alcohol evaluation and treatment, if recommended. The procedures by which this is accomplished vary with the thirteen judges. By far the most common procedure is by use of the presentence investigation. This procedure will be described in depth. The other two procedures, straight probation and bench probation, will be distinguished at the end of the explanation of the presentence process.

- Presentence Investigation. Over fifty percent of all DUII multiple offenders are referred to probation by the judge at the time of plea or conviction for a presentence investigation. Sentencing is set for approximately two months from the date of referral to probation.

  The defendant schedules an appointment at the probation department. At the appointment, a probation officer has the defendant complete a set of probation forms and checks the arrest report and prior record. If the probation officer is sure at that point that the defendant has an alcohol problem, he will refer

him immediately to ASAP or Project STOP for an evaluation interview and treatment recommendations. If the probation officer is unsure, he will have the defendant come back for a second appointment, at which time he will make his decision about whether to refer the defendant to ASAP or Project STOP for the evaluation. It is estimated by officials of the probation department that about sixty-five percent of the defendants referred to them for presentence investigation are referred to either treatment agency for evaluation.

When a defendant is sent to ASAP or Project STOP, he is given an evaluation. The initial interview takes from one to one and a half hours and consists of a one-to-one interview with a counselor. After the interview, the counselor contacts friends and relatives of the defendant and assembles relevant medical data. From this material the counselor makes an evaluation, including treatment recommendations. The evaluation is sent to the probation officer, who combines it with his presentence investigation and presents both reports with the resulting treatment recommendations to the judge at time of sentencing. The entire evaluation process generally takes a full two months, allotted during the presentence period. When the defendant returns to court for sentencing, he is placed on two years' probation to participate in the treatment program jointly recommended by the evaluating agency and the probation officer. The condition requiring treatment is open-ended enough to allow for changes in the treatment plan if they become necessary during the term of probation.

The judge at the time of sentening determines whether to place on probation defendants who were not

referred by the probation officer to a treatment agency for evaluation.

The defendants who are put on probation are then assigned a probation officer at one of the probation department's field offices. The choice of field office is usually contingent upon the area in which the probationer resides. Those probationers who have been evaluated by ASAP or Project STOP are instructed to return to the treatment agency to begin their treatment program. For those probationers who have not been evaluated, the probation office, if it finds it necessary, may make a referral to one of the treatment agencies. This does not happen often. Normally, a probationer who has not been assigned to a treatment agency before he reaches the probation field office will receive no further alcohol treatment referrals.

When a probationer who has been evaluated by ASAP or Project STOP returns to the treatment agency after being placed on probation, a treatment plan is assigned by his counselor at the treatment agency. In some instances, for those DUIIs interested in getting a conditional driver's license as soon as possible, the treatment plan may be initiated before sentence. This is not the norm, however. More treatment plans will call for treatment at the agency which made the evaluation. While referrals to other treatment agencies are possible, they are not often made. The type of treatment required varies, depending on the individual needs of the probationer.

Supervision of the probationer while he is in treatment is a joint effort between the treatment counselor and the probation officer. If the defendant stops coming to treatment or is otherwise

participating unsatisfactorily, attempts will be made by the treatment agency to contact the probationer. If this is to no avail, the agency will contact the probation officer who will also make attempts to contact the probationer to correct the problem. If the probation officer's contacts are to no avail, he will first attempt to have the probationer voluntarily come in to talk to the judge about the problem, and if this does not work, will seek a warrant. Warrants are clearly a last resort. This is partly because warrants are not served immediately, but will often remain on file until the probationer is stopped for another offense. The judges will usually enforce probation conditions if violations of the conditions are brought to their attention.

Once a probationer has satisfactorily completed his treatment program, his case is closed at the treatment agency and notice is sent to the probation office. If the probationer has been on probation for a year and has had no problems during the term of probation, the probation officer will often request early termination. For those cases that need a longer probation that the two years imposed at the time of sentencing, probation can be extended for up to an additional three years. Any probation extensions are rare.

- Straight Probation--A few judges choose not to have a presentence investigation done for a DUII. Instead, they place the defendant on probation at the time of plea or conviction with the open-ended condition that he receive an evaluation and become involved in treatment at a particular treatment agency. The same processes are used by the treatment agency in determining the defendant's treatment plan, and the

same processes are used by the probation department in assigning him a probation officer.

- Bench Probation--There are a small number of judges who, at the time of plea or conviction, require the defendant to go to a particular treatment agency for an evaluation, but do not refer him through the probation department. Instead, they place the defendant on "bench probation." The difference between bench probation and straight probation is that the treatment agency reports directly back to the judge on the defendant's progress in treatment, rather than through the probation officer. The probation officer has no hand in the supervision of these defendants.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

The federally funded ASAP in Multnomah County was the beginning of a formal health/legal system in Portland. Before ASAP, it is estimated by officials in the probation office that only about five percent of all DUIIs were ever placed on probation, and not even all of that five percent were required to participate in treatment.

When the ASAP was started, the presentence investigation concept was adopted, similar to the one in use today, except that the ASAP performed all of the alcohol evaluations. Two judges were assigned to handle DUII cases exclusively and all persons convicted of DUII were referred for a presentence investigation.

Because the number of arrests became large (due to the selective enforcement funded by the ASAP), due to the selective enforcement funded by the ASAP, it soon became evident that the court system could not handle all of the DUIIs which were being fed into the system. The two judges were handling 400 to 500 DUII cases per month, and were attempting to have a presentence investigation made on each case.

The first step to alleviate the congestion was to have presentence investigations made selectively. The judge would identify those defendants thought to have a drinking problem and would require presentence investigations only for that group. The judge's decision as to who might have a drinking problem was based on prior record, BAC, and in some instances, personal knowledge of the defendant. Those persons who were not referred for a PSI were generally required to attend alcohol education school.

While this alleviated the problem of dealing with the large increase in DUIIs after conviction, it did nothing to deal with the large numbers of DUIIs before conviction. More and more DUIIs were requesting jury trials and, as a result, a major backlog of DUII cases had developed. While plea bargaining of DUII cases was allowed at this time, according to a source from the district attorney's office, it was not done in a large number of cases.

In 1972, the Portland Municipal Court was merged into the district court. At the same time it was decided to merge the DUII cases, up until then heard by two judges, into the normal operations of the court. As a result, all of the district court judges began hearing DUII cases. Rates of referring DUIIs for treatment went down because not all of the judges were as careful to refer to all DUIIs as the two judges who had handled DUIIs exclusively up until this point.

It became standard practice for defense attorneys to demand jury trials for DUII cases. In response to this, in 1976, most first offense DUIIs were made infractions, rather than traffic crimes. As previously stated, it was the intent of the legislation to do away with the delay caused by jury trials by changing about seventy-five percent of all DUII cases from the classification of crime to infraction. As it happened, however, the denial of a jury trial for a DUII infraction was appealed, and it was recently held by the Oregon Supreme Court that DUII infractions are entitled to jury trials. During the time that the case was on appeal, all DUII infractions requesting jury trials were held up pending the outcome of the appeal. At the present time, the assistant court

administration reports that the backlog of DUII jury trials is at about 3,000 but that it appears to have reached a peak. The district court in Portland is still handling about 400 new DUIIs per month. A deputy district attorney says that at the present time the district attorney's office is working on getting a grant that would allow for the hiring of several deputy district attorneys to work specifically on reducing the DUII backlog.

The processes for getting the DUII into treatment after conviction have stayed essentially the same since the end of the federally funded ASAP. One major difference is that the ASAP, while continuing to operate, now operates on a much smaller scale, and curerently sees only about half of the DUIIs that are referred for alcohol evaluation. Project STOP, a program that came into existence after the federally funded ASAP ended, now sees most of the rest. During the period of the federal ASAP, ASAP funds were used to finance the additional probation personnel needed to supervise all of the DUIIs placed on probation. When the federal ASAP ended, the probation department absorbed those people into its budget.

One concern expressed by the present ASAP director is that the treatment agencies in the Portland area have not developed close cooperation. When an agency gets a client, whether it is from the court or any other source, it tends not to use the other agencies in the community as alternate referral sources. The ASAP director indicates that this is a direction that she intends to work toward in the future.

INSIGHTS AND IMPRESSIONS

- In an attempt to reduce trial backlog, first offense DUII was changed to an infraction so that jury trials would not be required. It is ironic that this actually increased the already existing backlog when it was held that DUII infractors were entitled to jury trials. Portland's experience may prove helpful to other jurisdictions. It is worth noting that legislation to decriminalize

DUII again, with changes to comply with the Supreme Court's ruling, will be submitted to the 1979 Oregon legislature.

- In Portland, as in Columbus, Ohio, another major city studied, the key to getting the DUII from the courts to treatment programs was the judge. When there are a large number of judges using the same health/legal system, they tend to have their own processes for using the system. In Portland, almost all of the judges regularly referred clients to treatment programs, but there were three distinct methods identified. The most common approach was presentence investigation, but a significant number of DUIIs were referred by straight probation or even "bench probation."

- The most common treatment modality in Portland was antabuse therapy, apparently a holdover from the federal ASAP days. Most communities that we have looked at do not use Antabuse to the extent that Portland does. It is also interesting that, until recently, antabuse was not used regularly in conjunction with a counseling program. At most other locations, it is felt extremely important by those who use Antabuse as a therapeutic tool that it be used in conjunction with a counseling program. The present ASAP director indicates that Portland's Antabuse program will be used together with counseling in the future.

- Portland learned what can happen to a court system when arrests are increased dramatically but there is not concurrent increase in the court personnel to process the arrests. Under the federal ASAP a sophisticated presentence procedure was developed but soon became swamped when the court began procssing all of the arrests. It quickly became necessary to modify the procedures to accomodate the court processing capabilities.

CASE STUDY SUMMARY FOR
PULASKI COUNTY, ARKANSAS

THE HEALTH/LEGAL SYSTEM

The Court System

In the state of Arkansas all Driving Under the Influence (DUI) cases are originally heard in a "court of inferior jurisdiction" or misdemeanor court. The court system is not unified, so the misdemeanor courts may have different titles throughout the state, such as mayors court, justice of the peace, or municipal court. The primary misdemeanor court throughout the state is the municipal court. In Pulaski County, the only misdemeanor courts that operate are the municipal courts.

Almost ninety percent of the population of Pulaski County is centered in the two cities within the county--Little Rock and North Little Rock. Each city is served by its own municipal court. For the purposes of this report, we have limited our description of the court system to these two courts, since they serve the vast majority of Pulaski County.

Throughout the state, felonies are heard in circuit court. In addition, appeals of DUIs are heard in circuit court. While the municipal courts are courts of record, appeal of a DUI is de novo in circuit court. A jury is not allowed in municipal court, but is available if the DUI is appealed to circuit court.

A defendant may appeal a plea of guilty or no contest made in municipal court as well as a conviction. The period of time necessary to conduct the appeal is considerable, and during this time all sentencing requirements are held in abeyance, including any suspension of the driver's license. In addition, in Pulaski County, there has been one judge in circuit court, in front of whom a majority of DUI appeals have been either reduced or dismissed. As a result, in Little Rock, DUIs are appealed fairly regularly in an

effort to delay any sanctions as a result of the plea or conviction, or in hopes that the case will be reduced or dismissed on appeal. This tactic does not appear to be used as regularly in North Little Rock.

There have been attempts recently to unify the misdemeanor court system through the state, making municipal courts the only misdemeanor courts. Up until now, however, these efforts have been fruitless. Likewise, there have been attempts to make appeals of misdemeanors in municipal courts "on the record," and to do away entirely with appeals of pleas of guilty or no contest, but these too, have been to no avail. The municipal judge in North Little Rock had no estimate when such judicial reform might come about.

The Driver Licensing System

The authority to issue, suspend, or revoke a convicted DUI's license is vested in the State of Arkansas Office of Driver Services, located in the state capitol, Little Rock.

The Office of Driver Services will suspend a DUI's license after receiving notice of conviction from the convicting court. With respect to Pulaski County, there does not appear to be a significant problem with the reporting of convictions by the municipal courts. If a plea or conviction of DUI is appealed to circuit court, action taken by the Office of Driver Services will be postponed pending the outcome of the appeal.

Act 829 of 1977 established a set of procedures to be used by the Office of Driver Services in the determination of the suspension of the DUI and issuance of any restricted license. These procedures will be discussed in the next section.

Sanctions Imposed on a DUI

Court-imposed sanctions for conviction of DUI include the authority to assess a fine and a period of jail. In practice, both are discretionary. By statute, the court is required to impose a minimum of ninety days in jail for the third offense within three

years. Neither judge in Little Rock nor North Little Rock imposes this period of jail; however, instead choosing to suspend all or a part of the jail term. In Little Rock, jail time will be required for a third or subsequent offense, but the term will generally be less than the statutory minimum. In North Little Rock, it is the philosophy of the judge that jail is not effective for DUIs and as a result, he will only impose jail after all other attempts at treatment have failed. Both judges impose fines for conviction of DUI.

Suspension of the driver's license by the Office of Driver Services is a major sanction against a DUI. Act 829 of 1977 lists the periods of suspension for conviction of DUI and the circumstances where a restricted license is available:

- Conviction of a DUI with no previous convictions within the preceding three years requires a ninety-day suspension. A hearing officer with the Office of Driver Services may grant a restricted license. In practice, a restricted license is granted almost automatically for first offenses. In addition, the hearing officer will usually agree to grant a limited license for specified periods of "leisure driving" if the driver is involved in an approved alcohol education or treatment program. This is the primary incentive that the Office of Driver Services uses to motivate first offenders to seek treatment.
- Conviction of a second DUI within a three-year period requires a suspension from six months to two years. The hearing officer may grant a restricted license if the defendant is actively involved in an approved alcohol treatment or education program.
- Conviction of a third DUI within a three-year period requires a revocation of the driver's license for a period of one to three years. The Office of Driver Services is authorized to restore a full or restricted

license only after completion by the defendant of an approved alcohol treatment program.

The Health System

Alcohol education and treatment services throughout the state are coordinated by the Comprehensive DWI Treatment Program of the Arkansas Office of Public Safety. This agency contracts with the Community Mental Health Centers throughout the state to provide alcohol education and treatment within the regions or "catchment areas" that they cover. There are sixteen catchment areas covering the seventy-five counties within the state. In Pulaski County the Mid-South Center on Alcohol Problems instead of the Community Health Center is the contracting agency for treatment services. The reason for this is that while most of the Community Mental Health Centers are private nonprofit corporations, the one in Little Rock is a state agency. The state agency did not want to contract with the Office of Public Safety for treatment services, so the Mid-South Center, a part of the University of Arkansas at Little Rock, was selected instead. According to an official with the Office of Public Safety, there is no difference in quality of services provided. There is strong support for coordination of local treatment agencies on a statewide basis because it allows for statewide assurance of relatively uniform treatment and education programs but at the same time allows the local agencies to adjust its programs to meet the needs of the community it serves.

The goal of the Comprehensive DWI Treatment Program is to provide three levels of alcohol education and treatment throughout the state. The levels are alcohol education, group counseling, and intensive treatment. When taken as a whole, these levels would provide a complete spectrum of alcohol treatment services to the DUI offender. At present complete alcohol education programs and at least limited or part-time treatment services are available in all sixteen catchment areas. The areas of larger population currently have full-scale treatment services provided on all three levels. A

continuing goal of the Office of Public Safety is to establish full-time treatment programs in the less populous regions of the state.

The Mid-South Center for Alcohol Problems provides the treatment services on all three levels for Pulaski County. These services are as follows:

- DWI School. For the defendant identified as a social drinker, this is an alcohol education program consisting of four two and one-half hour sessions, conducted once a week for four consecutive weeks. Content of the program is essentially didactic lecture and films on alcohol and its effect on the body and driving.
- Assessment Groups. For the defendant identified as an excessive drinker. Consists of eight sessions. The first four deal with alcohol information similar to that presented in the DWI school. The rest are devoted to developing an understanding of the motivations behind drinking and working toward resolution of personal problems that might be responsible for alcohol abuse.
- Ongoing Groups. For the defendant identified as a problem drinker or alcoholic. Consists of a minimum of eight sessions, but usually more. The purpose of these groups is to help the defendant understand he has a drinking problem and to motivate him to accept treatment. Often, referrals to other local agencies, such as AA or a local V.A. Hospital will be made from this group.

In addition to the treatment services provided by Mid-South, the Office of Public Safety also contracts with Serenity House, an inpatient treatment center, to provide alcohol treatment services for DWIs within Pulaski County. Typically, a referral to Serenity House will be made by the court only after all other treatment attempts

have failed.

Funding for the treatment services throughout the state comes from a variety of sources. In 1975, Act 931 authorized judges to assess a $25 fee on all persons convicted of DUI to fund the cost of providing alcohol treatment services. Federal funds are used to supplement the $25 fee. Both of these sources of funds are distributed by the Office of Public Safety when they contract with the Community Mental Health Centers. In addition, the Community Mental Health Centers usually charge a fee for treatment services beyond alcohol education, usually based on ability to pay. The Mid-South Center, unlike the rest of the contracting agencies, does not charge fees, as it is a part of the University of Arkansas at Little Rock, and receives a substantial portion of its funding from the university.

THE HEALTH/LEGAL PROCESS

Within Pulaski County, there are two municipal courts handling most of the DUIs with significant differences between them. Each of these court's processes will be discussed separately.

North Little Rock

At the time of arrest the arrestee is issued a ticket and taken to the station house. After administration of the breath test and completion of paper work incident to the arrest the defendant is held for six hours. After this time he may "bond out." The court accepts a driver's license as bond, so most people bond out by this method. Even out-of-state licenses will be accepted. If a person does not have a driver's license he must post a cash bond, usually $200 for first offenders or $500 for multiple offenders. Personal recognizance will not be given at the jail, but may be given the next day in court by the judge.

Those that bond out the night of the arrest (almost all DUIs) are given a bond receipt with a date to appear for arraignment, usually two to three weeks from the date of arrest. Those that do not bond

out will be arraigned the next day. Prosecutions are based on the ticket, therefore there is no warrant or charging procedure by the prosecuting attorney before arraignment.

When a defendant appears at arraignment he is advised of his rights and given the opportunity to plead guilty, not guilty, or no contest. Ninety-five percent of all DUIs in the North Little Rock Municipal Court are said to plead guilty or no contest at arraignment. The five percent that plead not guilty are given a trial date, usually about two months in the future. Of this five percent, only about half are interested in a trial, the other half are pleading not guilty in hopes that they can get the charge reduced. The judge in North Little Rock does not allow plea bargaining except in very limited circumstances. These cases usually involve juveniles with low BACs and no prior record. As a result, many of those defendants pleading not guilty will end up pleading guilty before trial. Of those that go to trial, almost all are convicted. After plea or conviction, the defendant has an absolute right for an appeal to circuit court with a jury trial de novo. If such an appeal is made, the defendant will have no further contact with the municipal court. In North Little Rock, less than two percent of all DUIs appeal from municipal court.

Assuming no appeal is taken, after plea or conviction, almost all DUIs will have their cases set over for sentencing or "first judgment" and referred to the Mid-South Center on Alcohol Problems for a presentence investigation. This is not done only when the defendant is not an Arkansas resident, when supervision of treatment would not be feasible.

At the time of referral to Mid-South, there is a counselor present in court who screens all DUIs. Those that he identifies as social drinkers, through a preliminary diagnosis using BAC, past record, and physical appearance, are immediately assigned to the DWI school. Those that are screened as excessive or problem drinkers, or about whose drinking status there is doubt, will be scheduled for a further evaluation at Mid-South, usually within one to two weeks of their

appearance in court. The evaluation interview is more complete than the initial diagnosis in court. It includes a complete social history, including a discussion of the person's drinking patterns. After this interview, the counselor at Mid-South will refer the client to an appropriate treatment modality. Most defendants receiving the evaluation interview will be assigned to the assessment group or the ongoing group. A few will be assigned to the DWI school. At this point it is also possible that a counselor will make a referral to another treatment agency such as AA, the V.A. Hospital, or Serenity House.

After making the referral, the counselor prepares a presentence report including treatment recommendations and submits it to the judge at sentencing. When the defendant returns to court for sentencing, the judge will delay "final judgment" or sentencing for a period of ten to twelve months on the condition that the defendant complete the recommended treatment program. The defendant signs a "waiver of adjudication" for this period, stating that he is requesting that final adjudication be delayed while he is seeking treatment. Although rare, it is possible for the period to be extended beyond the ten to twelve months if the defendant requests it. The court continues to hold the defendant's driver's license as bond during this period and does not report a conviction to the Office of Driver Services. During this time the defendant is free to drive without restrictions. If the defendant satisfactorily completes the treatment program, at the end of the ten- to twelve-month period he returns to court and is given a reduction in his fine or jail term or both. The conviction is then reported to the Office of Driver Services, which takes appropriate action on the driver's license. Since the defendant has already completed an alcohol treatment program he is immediately eligible for a restricted license. In the case of third offenders this is most beneficial, since the statute requires that they complete an alcohol program before they are eligible for a restored or restricted license.

The traffic probation officer and the Mid-South counselor jointly

perform supervision during the ten- to twelve-month period. If a defendant stops participating in treatment, the counselor, after attempting to gain compliance, will contact the probation officer. The probation officer, likewise, will attempt to contact the defendant and get him back into treatment. If this is to no avail, the judge will be notified and a bench warrant will be issued. Very few cases reach this point. Once a bench warrant is issued, it takes about two weeks before the warrant is served and the defendant is brought into court.

After the defendant appears in court the judge may reinstate the supervision period and allow the person to complete treatment or he may order final conviction and impose fine or jail. In most instances the judge will allow further opportunity to complete the treatment program, consistent with his philosophy that jail is not an effective alternative.

Little Rock

The procedures used by the municipal court in Little Rock are similar to those used in North Little Rock up until the time of conviction or plea of guilty or no contest. One difference is in the number going to trial. While ninety-five percent of all DUIs in North Little Rock plead guilty or no contest at arraignment, officials estimate that seventy to seventy-five percent plead at arraignment in Little Rock. Almost all of those that plead not guilty go to trial in Little Rock, due in large part to the judge's insistence that those DUIs that have trial dates scheduled go to trial. Typically, trials for DUI are held within two weeks after arraignment.

After plea or conviction in Little Rock Municipal Court, a significant number appeal to circuit court. It is not known exactly why this happens more in Little Rock than North Little Rock, but it appears to have developed as a result of some conflict between the Little Rock Municipal Court judge and a circuit court judge. While the conflict appears to have been resolved, the practice still

persists in the Little Rock court.

If appeal is not taken, after plea or conviction, defendants will be dealt with as follows:

- First offenders with BACs less than .20% w/v will be sentenced at the time of plea or conviction. Notice of conviction is sent to the Office of Driver Services at this time. In addition to the fine, they will be ordered to attend the Court Driver Improvement School. This is essentially a defensive driving program with some alcohol information included, and is taught by the probation officer for the Little Rock Municipal Court. Fifty dollars of the fine is suspended if the defendant completes the program.
- First offenders with BACs greater than .20% w/v have their sentencing delayed for eight days. They are sent to a Mid-South counselor in the court who arranges for a presentence interview before they return to court. There is an evaluation interview similar to the one performed in North Little Rock and the presentence report along with treatment recommendations are submitted to the court before sentencing. When the defendant returns to court for sentencing, it is a condition of suspended sentence that he participate in the treatment program recommended by Mid-South and the Court Driver Improvement Program. Treatment recommendations made by Mid-South to the Little Rock court have never exceeded twelve sessions. Notice of the conviction is sent to the Office of Driver Services at this time. If the defendant completes both programs he is given a $50 reduction in fine.
- Multiple offenders (one or more DUIs within three years) are referred directly to the probation officer at the time of plea or conviction. Sentencing is set for eight days later. All multiple offenders are

enrolled in the Driver Improvement Program and asked to enter the court Antabuse program. About fifty percent of all multiple offenders agree to enter the Antabuse program.

If the defendant agrees to take Antabuse after receiving a prescription from his doctor, he returns to court for sentencing and is placed on the Antabuse program. Participation in the program requires having the Antabuse use monitored at the court for a period of one year and entering a Mid-South treatment program. During this time final judgment, or sentencing is not imposed and notice of the conviction is not sent to the Office of Driver Services.

At the completion of the year, the defendant is sentenced and placed on unsupervised probation for one year. Completion of the Antabuse program will mean suspension of all or part of a jail term.

Multiple offenders who do not accept the Antabuse program (about fifty percent) are handled just as first offenders with BACs greater than .20% w/v. The only difference is the incentive. First offenders will get a portion of their fine suspended, multiple offenders will get all or a portion of jail time suspended.

Unlike the judge in North Little Rock, the judge in Little Rock will impose jail with third or subsequent offenders. In addition, if the defendant has already been through Mid-South he will not be referred there again. The defendant will, however, be asked to complete the Driver Improvement Program each time he is convicted of DUI.

Supervision of treatment in the Little Rock court is similar to the process in North Little Rock. While the defendant is involved in treatment it is shared by the Mid-South counselor and the probation officer. Reports of nonattendance are made from the Mid-South counselor to the probation officer, who then requests any necessary

action from the judge. As in North Little Rock, only a small number of defendants are brought into court on bench warrants, and most are allowed to continue treatment after appearance.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

Before the federally funded ASAP began in 1971, there was no formal process for getting large numbers of DUIs into treatment programs. The judge in Little Rock had established his Antabuse program in 1970, however, this accounted for only a small percentage of all DUIs.

The funding of the ASAP in Pulaski County marked the beginning of a concerted effort to get DUIs from the courts to treatment programs. The procedures used today do not differ substantially from the process used during the ASAP. The style and effectiveness of the process have improved greatly however, according to the director of the Mid-South Center. The DWI school has changed its curriculum to become more oriented to education, rather than attempting to change behavior. Under the ASAP, which expired in 1974, the emphasis was on evaluation of DUIs. At present, the emphasis has turned more toward treatment, with evaluation seen as a necessary first step of treatment.

The most important improvement since the ASAP period has been the development of trust and confidence among the courts and the treatment agencies. Both judges admit that at first they did not refer everybody to participate in the ASAP program. As time passed however, the judges began referring DUIs as a matter of course. Several reasons can be identified for the increased level of referral. First, as the Mid-South counselors appeared in court every week, the judges became acquainted with them and began to use their services. Second, according to the judge in North Little Rock, he initially was referring only those DUIs with a perceptible alcohol problem. With the establishment of the DWI school he started referring everybody as a matter of course, because he thought that,

at a minimum, the DWI school would be helpful. Third, and most important, it appears the only effective route to acceptance of the ASAP concept was the passage of time, allowing mutual confidence to develop between court and Mid-South personnel. All agree that this could not happen overnight, but needed a period of years to develop.

Also important to the development of the system was the state legislature's decision to continue the ASAP concept after the federal funding ended in 1974. In 1975, Act 931 was passed by the Arkansas General Assembly. This act provided for the assessment of $25 costs for every DUI conviction. The money was then sent to the state treasury and used by the Office of Public Safety to establish its currently operating network of alcohol services throughout the state. To make the critical link between the treatment services and the courts, Act 931 required the court to suspend or revoke a convicted DUI's license and gave the court the authority to grant a restricted license if the DUI was actively involved in a treatment program. Later, in 1977, Act 829 was passed, removing the authority to suspend, revoke, or restrict from the court and vesting it in the Office of Driver Services. This was done primarily in recognition that since the license was issued by Office of Driver Services, it eliminated confusion among the courts, drivers license officials, and drivers, if the authority to take away or limit the license was also with the Office of Driver Services. Most people within the system feel that the change made the system more workable.

Since Pulaski County was the site of ASAP, acceptance of the system promoted by Acts 931 and 829 was easy. The groundwork for entering DUIs in treatment programs had already been laid by the ASAP. Throughout the rest of the state, it was necessary to convince the judiciary to use the treatment services available for DUIs.

An important strategy was the judicial seminar. Included in the initial contract with each Mental Health Center was a provision for a seminar to introduce the judges to the treatment agency and the services available. The Office of Public Safety felt it important that these seminars be run locally so that the local court system saw

it as a community program, rather than a state program. The seminars proved helpful in promoting acceptance and use of the treatment agencies by the courts. In addition, the Office of Public Safety would visit communities across the state to talk with local officials about using the Comprehensive DWI Program. This strategy was not stressed however, in an effort to downplay the role of the state in the program.

According to the Office of Public Safety, the statewide network of treatment services is now established and most of the courts are using it. Effort now is concentrated on expanding the treatment services available within the communities. By the end of 1978 a juvenile alcohol program will be instituted in the sixteen cities where the metal health centers are located. Designed for the DUI offender under twenty-one, it is essentially an expansion of the DWI school. It consists of attending the DWI school, plus an extra session dealing with the problems of alcohol use and abuse associated with young people. The classes will be comprised totally of youthful offenders to allow for interaction among the group members during the five-session school.

INSIGHTS AND IMPRESSIONS

- Developing health/legal systems throughout the state of Arkansas can be seen as a three-step process. First, a treatment program was developed including levels of treatment and evaluation procedures. Second, the treatment program was fit into existing community treatment resources, and third, once the treatment services were set up and available, the court system was hooked up to provide the clients. Establishment of the system in any other order would likely have been ineffective.
- The state of Arkansas is similar to South Carolina in its experience with the original NHTSA-funded ASAP. Both states, after the federal funding ended, established a statewide program based on the original ASAP concept, coordinated at the state level, but

operated and administered at the local level. Both appear to have had some success with this approach.

- The amendment of Act 931 by Act 829 indicates a belief on the part of the state of Arkansas that the authority to take action on a driver's license should rest with the licensing agency rather than with the courts. In other states, there is sometimes confusion when the courts and the licensing agency have concurrent powers.

- The appeal procedure available in municipal court appears to constrain the processing of cases. Because an appeal can be taken on a plea of conviction, and the appeal is heard de novo, it makes any action taken in municipal court meaningless if an appeal is taken. It also appears that a significant number of defense attorneys take advantage of the process to delay adjudication of the case. It has a special impact on the health/legal system because it appears that even if a plea or conviction is upheld on appeal in circuit court, the circuit judges do not mandate treatment.

- An important strategy in the acceptance and use of the health system by the courts was the presence of the alcohol counselors in the court, which allowed the judges to get to know and trust them and to become more likely to use their services.

- The overall system in Pulaski County really appears to be operating in two spheres, the court and the Office of Driver Services. The court in almost all instances is requiring treatment as a condition of sentence and the licensing agency is requiring treatment upon receiving notice of conviction from the court. In most cases, the licensing agency nearly always approves the treatment that has been required by the court.

- In Pulaski County, as in many other jurisdictions, a DUI in treatment will be dually supervised. The counselor from Mid-South makes sure he goes to treatment and notifies his probation officer if he does not. The probation officer, in turn, is responsible for going to the judge to request any enforcement action.

This sharing of supervision by the counselor and probation officer is beneficial in that it allows the counselor to develop a

therapeutic relationship with the client without being the authority figure, or the enforcer. At the same time, however, adding another step to the supervision process often creates administrative delays and personality conflicts between the supervisors. This appears to have happened in Pulaski County and other jurisdictions (Washtenaw County, in particular). It is important to note however, that these problems tend to disappear over time as the people involved get to know each other and work out between themselves any problems in the process.

CASE STUDY SUMMARY FOR
THE STATE OF MAINE

THE HEALTH/LEGAL SYSTEM

The Court System

All Operating Under the Influence (OUI) charges are misdemeanors in Maine, regardless of the degree of offense. Those charges are heard in district court, a court of limited jurisdiction. There are eighteen district court judges throughout the state, serving a population of approximately one million. District courts are courts of record; but an appeal of an OUI conviction is heard de novo in the superior court, the court of general jurisdiction. Generally speaking, appeals of OUI convictions are taken either to buy time for the defendant or to try to get the charge reduced or dismissed.

The district court judges, in requiring the OUI to enter alcohol education and treatment programs, apparently do not employ a common procedure. Judges use a variety of methods to motivate the OUI to seek treatment, including probation, conditions of sentence, and pretrial diversion. According to the treatment personnel, however, very few district judges regularly require defendants to seek treatment.

It is clear that the primary system for getting OUIs into treatment is through the Motor Vehicle Division (DMV), which requires proof of alcohol education or treatment before the driver's license is returned to a convicted OUI. Indeed, many district judges think that this is the province of the DMV, and therefore, they will leave any requirement of treatment up to them.

In general, then, the courts are seen as the agency that adjudicates the OUIs. Once adjudication has taken place, the courts in most instances turn the defendant's treatment regimen over to the DMV. That program within the DMV is the primary emphasis of this report.

The Driver Licensing System

The authority to issue, suspend, or revoke the driver's license in the state of Maine is vested in the Motor Vehicle Division (DMV). The authority to suspend or revoke for conviction of OUI is exclusive except in the following instance. The sentencing judge may suspend the license of a convicted OUI for a maximum of thirty days. Any suspension imposed by the sentencing judge is concurrent with the suspension imposed by the DMV. In many instances, the sentencing judge uses his suspension power to facilitate collection of the suspended driver's license. By imposing suspension in court, the judge may collect the license and send it to the DMV, which is then responsible for the eventual return of the license. If the sentencing judge does not suspend and collect the license, the DMV must collect the license either by mail or in person when they notify the driver of his suspension.

The DMV takes action to suspend the convicted OUI's license when it receives notice of conviction from the court. Officials within the DMV report no significant problem with the timely reporting of convictions by the courts. Once the DMV receives notice of conviction, if the judge has not already suspended the license, the DMV waits fifteen days before the effective date of suspension. The primary reason for this is to allow the driver time to appeal the OUI conviction. If the judge has suspended the license, the effective date of the suspension becomes the date that the license was taken by the judge.

No hardship or occupational licenses are granted during the minimum period of suspension. The DMV may issue restricted licenses after the minimum suspension or revocation period has been served.

Sanctions Imposed on a Convicted OUI

Court-imposed sanctions for convictions of OUI include a fine and jail. Both are, in practice, discretionary with the sentencing judge. According to an official with the DMV, there is a mandatory

jail sentence of twenty-four to forty-eight hours for second offense, but most judges do not impose it. The sentencing judge may also impose probation for convictions of OUI.

The primary sanction used in the state of Maine for requiring OUIs to seek treatment or education is driver's license suspension or revocation. Since 1974, the license suspension-revocation laws for conviction of OUI have either encouraged or required the driver to participate in, at a minimum, an alcohol education program. At present, the laws require that as a condition of the convicted OUI's regaining his driver's license.

The periods of license suspension for an OUI conviction are as follows:

- First offense within six years results in a mandatory thirty-day suspension. The driver is eligible for the return of his license after the thirty-day period if he has successfully completed the Driver Education and Evaluation Program (DEEP). The DMV usually imposes a restricted license for a period after the suspension is lifted.
- Second offense within six years results in a mandatory six-month suspension. The driver is eligible for the return of his license after the six-month period if he has successfully completed DEEP and any treatment program that DEEP recommends. Once again, the DMV usually imposes a restricted license for a period after suspension is lifted.
- Third and subsequent offenses within six years result in a mandatory two-year suspension. The driver is eligible for return of his license after the two-year period only if he can demonstrate that he has completed an alcohol treatment program and has abstained from the use of alcohol for two years.

All of the suspension periods mentioned above are mandatory minimum periods. It is within the discretion of the DMV to return the

license after the mimimum period of suspension has been served. In almost every case, the license is returned after the minimum suspension period if the treatment or education requirement has been met.

The Health System

All treatment agencies within the state of Maine to which convicted OUIs are referred in satisfaction of the DMV's licensing requirements must be licensed by the Office of Alcohol and Drug Abuse Prevention (OADAP) within the state's Department of Human Services. In practice, all major treatment agencies within the state are licensed. The range of treatment services available include outpatient services that offer group, family, and one-to-one counseling; inpatient rehabilitation programs; halfway houses; and detoxification centers. The treatment agencies are financed in a variety of ways, including fees usually based on ability to pay, and grants from federal, state, and local sources.

All first- and second-offense OUIs are required to complete the Driver Education and Evaluation Program (DEEP), which provides alcohol education and makes treatment referrals if necessary. The DEEP is a part of the Office of Alcohol and Drug Abuse Prevention (OADAP) and has its main office in Augusta, the state capitol. There are twelve instructors operating DEEP schools at twenty-three locations throughout the state. In some locations the DEEP school is located at a local alcohol treatment agency, and the DEEP instructor may also be an employee of the treatment agency. In other locations, the DEEP school is not part of any local treatment agency, but the DEEP instructor is well acquainted with the treatment services available in the community.

The DEEP school is essentially self-supporting. About ninety percent of its funding comes through a $40 fee assessed every driver who participates in the program. Some financial assistance is received from the Bureau of Safety within the State Department of Transportation.

THE HEALTH/LEGAL PROCESS

The primary system for placing OUIs into alcohol education and treatment programs is the DMV system, described below. District courts sometimes require OUIs to seek treatment, but that is not done systematically. The DMV system operations are described here by categories of OUI offenses committed.

First Offense Within Six Years

After conviction for first-offense OUI, the driver's license is suspended for thirty days, either by the judge or the DMV. In some courts, the court clerk informs the driver at the time of conviction that he must participate in the Driver Education and Evaluation Program (DEEP) to get his license back after thirty days. The DMV informs every driver of the DEEP requirement when it sends him his notice of suspension.

When the driver contacts the DEEP program he is given the date of the next available session in his area and told when and where to report. In the more populous areas of Maine, DEEP is offered twice a month, and in the rural areas it is given once per month. When the driver reports to DEEP, he fills out the registration form.

Each DEEP school runs for one week, meeting five nights during the week. The first night is essentially an introductory session in which the instructor and the group get to know each other and all the requisite paperwork is completed, including PART A of the Mortimer-Filkins test. The second night, concerned with alcohol education, deals with alcohol and its effects on the body and driving. The third night is devoted to helping the group recognize when alcohol becomes a problem. The fourth and fifth nights are devoted to one-on-one interviews with each group member. PART B of the Mortimer-Filkins test is also administered. If the instructor thinks further treatment is necessary, he makes a referral at this point. All treatment referrals must be to OADAP-licensed treatment

agencies.

After the convicted driver has completed the DEEP, the instructor signs the driver's registration form, indicating satisfactory completion of DEEP and whether any treatment referrals were made. The registration form is sent to the director of DEEP at the headquarters in Augusta. He, in turn, sends the forms to the Driver Improvement Division of the DMV. The director of DEEP indicates that almost all those who enroll satisfactorily complete DEEP, largely because of the strong motivation to regain the driver's license. He also estimates that of 5,300 OUIs last year, 3,500 were first offenders.

The DMV's decision to reissue the license is made when the following requirements are met:

- receipt of the DEEP registration form showing satisfactory completion;
- completion of the thirty-day suspension period; and
- payment of a $10 restoration fee.

In almost all instances, the driver's license is reinstated upon completion of these three requirements. However, the DMV might not reissue the license at this time if it has independent knowledge that the person is still drinking and driving abusively, or has excess points.

In most instances the DMV reissues a restricted license. The period of restriction ranges from sixty days to six months. During that period the driver is restricted to driving to and from work and to driving only during specified daytime periods. The determination of the length and scope of the restrictions is based upon the severity of the driver's record. In addition, the DMV may impose a condition of the license that the driver participate in the treatment program recommended by DEEP. The DMV finds it necessary to impose treatment conditions on first offenders, because the statute requires only satisfactory completion of DEEP, not DEEP plus treatment. Recognizing that some first offenders may need more intensive alcohol treatment than DEEP can provide, the DMV makes any treatment

recommendations for first offenders a condition of obtaining a restricted license after the mandatory suspension period has been served.

The DMV monitors a driver's treatment while on a restricted license through the treatment status forms sent by the treatment agency to DEEP and then forwarded to the DMV. The treatment status forms are filed by the treatment agency any time there is a change in the driver's treatment status. If the driver drops out of treatment, and attempts by the agency to reinstitute treatment are of no avail, the agency files an unsatisfactory treatment status form. When the DMV receives the notice it notifies the driver that he has sixty days to resume treatment. If treatment or counseling is not completed within the period of the restricted license, the DMV does not renew the license. The number of drivers resuspended for failing to complete treatment is very small.

An official with the DMV estimates that about twenty-five percent of all first offenders attending DEEP are recommended for further treatment. Treatment programs vary in length from four to twelve weeks.

Second Offense Within Six Years

The procedures used for OUI second offenders are essentially the same as for first offenders. All second offenders are required to attend DEEP to be eligible for the return of their license. Second offenders' licenses are suspended for a minimum of six months, and their license is not returned until they have completed a treatment program, if one is recommended by DEEP. Officials at DEEP and the DMV estimate that the percentage of second offenders referred to treatment programs is relatively high.

As in the case of first offenders, the treatment agency to whom a driver is referred monitors his treatment. A treatment status report is filed with DEEP at every change in treatment status. DEEP, in turn, transmits it to the DMV.

When the DMV receives verification that the treatment has been

satisfactorily completed, the six months' mandatory suspension has been served, and the $10 restoration fee has been paid, the DMV determines whether it will reissue the license. As with first offenders, the decision is almost automatic once those three requirements have been met, unless the DMV has independent knowledge that the driver is continuing to drink and drive. When the license is returned, it is usually reissued as a restricted license for a six-month period, after which the full license is restored.

After the minimum three requirements of treatment, six-month suspension, and payment of the $10 restoration fee have been met, if the DMV continues to withhold the license, the driver may appeal the DMV's denial to superior court. Since return of the license is almost automatic once the minimum requirements are met, this has seldom occurred in practice.

If a second offender has been through DEEP as a first offender within a year prior to his present offense, he is not required to complete the DEEP again. He may go directly into treatment and be eligible for return of his license after satisfactory completion of treatment and the six-month suspension period.

Of the 5,300 OUI offenders handled yearly in Maine, it is estimated that 1,200 to 1,400 are second offenders.

Third Offense Within Six Years

After conviction of a third offense of OUI within a six-year period, the driver is informed by either the court or the DMV that his license will be suspended for a minimum of two years. He is also told at this time that he will be eligible for return of his license after the two years only if he completes an OADAP-licensed treatment program and obstains from alcohol for the two years.

After the two-year period is served, the driver may petition the DMV for a restoration hearing. The DMV before the hearing may, at its option, perform a background investigation.

Before restoration, the driver must present proof that he has completed a treatment program and has abstained from the use of

alcohol for two years.

At present the DMV has no experience with this system of handling third offenders. The law went into effect in 1977, and no third offender will be eligible for a restoration hearing until 1979. As a result, the DMV has not yet developed criteria for determining when a third offender has satisfied the two requirements of abstinence and treatment. It is probable that the treatment process, including monitoring, will be similar to that for first and second offenders.

Of the 5,300 OUIs handled yearly by the DMV, it is estimated that 500 to 600 are third or subsequent offenders.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

Systematic attempts in Maine to get OUIs into treatment began with the federally funded Alcohol Safety Action Program. The ASAP, operated from 1970 to 1973 through the courts in York and Cumberland Counties, was primarily interested in identifying and treating the problem drinker. As a result, only second and subsequent offenders were processed through ASAP.

The head of the DMV at the time liked the ASAP concept, and when he saw it starting to die in the courts as the federal funds ran out, decided that the DMV could develop a similar approach. In 1974, he and a former ASAP employee developed the Driver Rehabilitation Course (DRC), which was administered by the Driver Improvement Division of the DMV. Similar in style to the ASAP, it had one major difference. It was a program designed for first offenders in an attempt to prevent second and subsequent offenses. Essentially an alcohol education program provision was made for referrals to treatment from the course. The DRC was the forerunner of the present DEEP program.

The DMV quickly recognized the necessity for a strong motivation on the part of the driver to participate in DRC. Thus, through several pieces of legislation, the DRC program was strengthened to require that drivers participate as a condition of regaining their licenses after conviction of first or second OUI.

The first piece of strengthening legislation came in 1975 when a law was passed making it very attractive for first offenders to participate. First offenders who participated in DRC were eligible for return of their license after a thirty-day suspension. Those who did not had to wait 120 days before they woud be eligible. While not mandatory, the incentive was so strong that most first offenders participated. At the same time, there was no treatment requirment for second and subsequent offenders. The law for multiple offenders at this time was as follows:

- Second offense--one-year suspension with the provision that the driver was eligible for return after six months; while DRC was not required for early return, completion of the program was helpful.
- Third offense--three-year suspension with driver eligible for early return after two years; while DRC was not required for early return, completion of the program was helpful.
- Fourth and subsequent offense--five-year suspension with the right to a hearing after five years; the driver had to prove abstinence for two years at the hearing.

The next piece of strengthening legislation occurred in October 1977 when DEEP (by now, the name of the program had changed) was made mandatory for return of the license for second offenders. In addition, if any treatment beyond DEEP was recommended, that would be required also. As a result, if a second offender wanted his license back he had to complete DEEP and further treatment if recommended. Otherwise, he would be suspended indefinitely. At the same time, the distinction between third and fourth offenders was abolished, and third and subsequent offenders became subject to the present treatment and suspension requirements.

The final piece of legislation occurred in March of 1978, when DEEP for first offenders, and DEEP plus treatment for multiple offenders, was made absolutely mandatory for return of the license.

This was accomplished by doing away with all of the maximum suspension periods and imposing indefinite suspension periods with a specified minimum period of suspension, as well as the treatment requirement. The minimum period for second offenders is six months. These requirements are the ones being enforced today.

The only new piece of legislation that officials with DEEP and the DMV could recommend that would further strengthen the system would be to require that first offenders must complete DEEP plus treatment, if required. At present, first offenders are required only to complete DEEP. The DMV, through its procedure of restricting the license, is enforcing the treatment requirement for first offenders.

Included in the October 1977 legislation was the reorganization of DEEP. Previous to this time, it had been within the Driver Improvement Division of the DMV. With the legislation, however, DEEP was transferred to the Office of Alcohol and Drug Abuse Prevention (OADAP) within the Department of Human Services. The reason for the change appears to be the feeling that alcohol education and treatment should be administered by that department rather than by the licensing agency.

The administrator of DEEP and officials within the DMV think the program would be more efficient if it were located within the Driver Improvement Division. They feel the optimal system would be to have all facets of the process, including the treatment, within the DMV.

The relationships between the treatment agencies, DEEP, and the DMV have evolved evenly. The director of DEEP is a former employee of the DMV, and as a result, communications between the two appear extremely smooth.

INSIGHTS AND IMPRESSIONS

- As with many of the ASAP jurisdictions studied, the ASAP appears to be a primary reason why a statewide system for dealing with OUIs has developed in Maine. The DMV approach was developed in large part by a former ASAP employee.

- The courts in Maine appear to recognize that the DMV is the agency through which OUIs will be required to seek treatment, and as a result, seem to leave it up to the DMV. There does not appear to be any systematic process within the courts for dealing with the OUI.
- The operation of a health/legal system through the DMV is attractive, in that it is much more centralized and much easier to coordinate than individual courts and judges throughout the state. One limitation of the system, however, is that the DMV is dependent on receiving a conviction from the court. If the charge is reduced, dismissed, or notice of the conviction is not sent to DMV, then DMV has no basis for action.
- It is interesting that there are two agencies involved in the health/legal system--DMV and OADAP. Persons with whom we talked appear to be strongly in favor of combining the entire process within the DMV.
- The DMV's conditioning return of a first offender's license upon his completing any recommended treatment has not yet been challenged in court. Possibly the first-offense OUI may appeal to superior court after he has regained a restricted license but then loses that license when he fails to complete treatment. The statute is clear that the only requirements for return of the license to first offenders are the completion of DEEP and the thirty-day suspension.

CASE STUDY SUMMARY FOR
THE STATE OF WASHINGTON

THE HEALTH/LEGAL SYSTEM

In the state of Washington, both the courts and the Department of Motor Vehicles have processes for getting individuals arrested for driving while intoxicated (DWI) into treatment programs. The court processes vary from court to court, while the DMV's processes are standard and designed to identify the abusive alcohol drinker/driver. The purpose of the Washington case study was to obtain an understanding of the processes used by the DMV in getting the DWIs into treatment programs. Officials within the DMV and the local treatment agency were not familiar enough with the court system's operation to give us a detailed description of the court processes. As a result, this report does not attempt to describe the court procedures for getting DWIs into treatment in Washington, except for a brief description of the court system below. The points at which the DMV and the courts cooperate to motivate the DWI to seek treatment are noted.

The Court System

In the state of Washington, courts that hear DWI cases are the municipal and district courts. Which court hears the DWI case depends on the location of the arrest, the police agency making the arrest, and whether a municipal court exists in the area. Neither municipal nor district courts are courts of record. Appeals of DWI convictions are heard de novo in superior court, the court of general jurisdiction. It is a common strategy of the defense bar to appeal a DWI, because the appeal often takes considerable time. In many instances, the appealed DWI will be plea bargained to a lesser offense before it is ever heard in superior court. There is an effort at present to unify the state of Washington's court system and

to make district court a court of record. If done, appeals of DWI would probably be on the record.

There are no DWI felonies in the state of Washington. However, an essential element of negligent homicide or manslaughter through use of a motor vehicle is proof of reckless driving or driving while intoxicated. Negligent homicide and manslaughter are felonies and are heard originally in superior court.

While courts refer DWIs to treatment programs, there are no unified court referral procedures throughout the state. Several judges refer DWIs to treatment as a matter of course, but others make almost no referrals. The procedures used are just as diverse. Some judges make treatment or education a condition of probation; others require it as a condition of suspended sentence. A procedure called "deferred prosecution," involving the cooperation of the courts and the DMV, is discussed in Deferred Prosecution below.

The Driver Licensing System

The authority to issue, suspend, or revoke the driver's license in the state of Washington is vested in the Department of Licensing (DOL). Their authority is exclusive, except that in certain instances (described later in this report) the court may recommend or order that the license not be suspended or revoked by the Department of Licensing. There is also a provision for the court with the approval of the DOL to grant an occupational license.

The Department of Licensing takes action on a driver's license once it receives notice of a DWI conviction from the court. Officials with the Department of Licensing state that while they know that some DWI convictions are not reported by the courts, nonreporting does not appear to be a significant problem, especially in the areas with larger populations.

Sanctions Imposed on the Convicted DWI

Sanctions imposed by the courts vary throughout the state. Fines and jail terms are the normal sanctions; however, both are

discretionary with the court. There is provision for the court to use its probation power for convicted DWIs.

The driver's license suspension or revocation is a major sanction in the state of Washington. The periods of suspension for conviction of DWI are as follows:

- First offense within five years results in a thirty-day suspension. The court may recommend to the DOL that they not suspend the license. The DOL follows the recommendation unless one of the following circumstances is present:
  - there is a previous DWI in the driver's record;
  - there is a previous physical control offense on the driver's record, which was reduced from DWI;
  - the defendant refused the breath test at the time of arrest; or
  - the driver currently has a probationary license from the DOL.
- Second offense within five years results in a sixty-day suspension. This suspension period will be applied even if the court processes the driver as a first offender.
- Third or subsequent offense within five years results in a one-year revocation.

An occupational license is available for all drivers who lose their license as a result of a conviction for DWI. The driver must petition the court, which makes the determination as to whether a restricted license will be granted for the purpose of driving to and from work and in the course of employment. If the court finds that such a license should be granted, it orders the DOL to issue an occupational license. The driver takes the order to a DOL examination station where, after payment of a $10 fee and posting of financial responsibility insurance, the occupational license is issued.

The DOL must issue the occupational license unless one of the

following circumstances is present:

- the driver does not presently have a valid Washington operator's license; or
- the person has a prior conviction for an offense requiring a mandatory suspension (hit and run, negligent homicide, DWI, or driving while suspended) within the proceeding twelve months.

Courts do not usually order occupational licenses if either of these circumstances is present, so in practice, the DOL rarely refuses to issue an occupational license.

After conviction for DWI, the DOL takes no action on a license for thirty days from the date of conviction, to allow the driver time to appeal the conviction or apply for an occupational license. If the driver violates the terms of the occupational license while on suspension, the DOL cancels the license and suspends the driver for an additional period of time equal to the original suspension. If the driver violates the terms of the occupational license while under revocation, the DOL revokes the license for an additional year, starting from the time that the original revocation ends.

The Health System

Alcohol treatment and education services are coordinated on a statewide basis by the Department of Social and Health Services (DSHS). The DSHS contracts with the county commissioners in all thirty-nine counties for the establishment of Community Alcohol Centers to provide treatment and education services for their respective counties. The county, in turn, either hires the alcohol treatment personnel itself or subcontracts with legal treatment agencies. The most common method is for the county to subcontract for the services.

The funds for the contracts come from two sources:

- an appropriation from the state legislature;
- proceeds from the sale of alcohol--each county is required to put two percent of its revenues from taxes

and profits of the sale of alcoholic beverages into alcohol treatment programs. The proceeds are submitted to the state by each county and returned to the counties through the contract process. The funds are apportioned based on each county's population.

To be eligible for a Community Alcohol Center contract, a county must provide the following treatment and education services:

- an information/referral service,
- an outpatient treatment program, and
- an alcohol information school.

The county may subcontract with one agency to provide all three services, as in Olympia, or the services may be lodged in three different agencies. The only requirement for receiving the funds from the DSHS is that those three services are provided.

The Community Alcohol Centers take referrals from a variety of sources. The DOL and the courts are probably the heaviest users; however, referrals also come from schools, industry, and other social service agencies. The centers usually charge fees, based on ability to pay.

Other treatment agencies throughout the state are not a part of the Community Alcohol Centers. In most instances, these are inpatient programs. For purposes of requiring treatment, the DOL uses these agencies only as a result of a referral from a Community Alcohol Center.

THE HEALTH/LEGAL PROCESS

In its procedures for dealing with the DWI, the Department of Licensing is primarily interested in identifying the problem drinker/driver and motivating him to seek treatment. The three procedures used by the DOL to accomplish this goal are discussed in this section. The first is operated solely by the DOL, while the second and third consist of a joint effort between the DOL and the courts.

Driver Improvement Program

The Driver Improvement Program is administered by the Driver Improvement Division of the Department of Licensing. A driver is required to participate in the program after getting two alcohol-related entries on his driving record within five years. (The DOL has recently been advised by the Washington Attorney General's Office that it may change its criteria to one alcohol entry within five years. The DOL is currently in the process of changing over its records to accommodate the new criteria. The procedures will be the same as for the present criteria. For purposes of explanation, the present criterion of two alcohol-related entries is used.) Alcohol-related entries on the driving record include convictions of DWI, physical control convictions reduced from DWI, and alcohol-related accidents.

Once the DOL identifies a driver with two alcohol entries within five years, he is called in for an alcohol control interview. The interview, which lasts two hours, consists of a group discussion involving five to ten drivers and a group leader. The primary purpose of the interview is to provide information about drinking and driving. Even drivers who are currently involved in alcohol programs through the court are required to attend the alcohol control interview. At the end of the interview, each driver is placed on a two-year period of driver's license probation.

During the probationary period, if another alcohol entry appears on the driver record, the DOL suspends the license for at least thirty days, effective fifteen days from the notice of the new alcohol entry. The driver may request an administrative hearing from the Department of Licensing, but must do so before the effective date of the suspension. At the same time that the notice of suspension is sent to the driver, he is informed that he will not be eligible to get his license reinstated until he is satisfactorily involved in an alcohol treatment program at his local community alcohol center.

When the driver reports to the community alcohol center he is

given a diagnostic interview by an alcohol counselor. The interview is a one-to-one session and may be supplemented with further interviews with the driver or his family members. The diagnostic process typically takes two weeks. The counselor then develops a treatment plan for the driver. Most treatment plans call for outpatient counseling once a week for the first month and then biweekly through the next five months. After that period, treatment is usually determined on an as-needed basis.

Sixty days from the driver's initial contact with the community alcohol center, the counselor files a treatment certificate with the DOL. In the certificate the counselor indicates whether he believes the driver is successfully involved in treatment and is making positive behavior changes. If so, the DOL drops the suspension and the defendant regains his probationary license. The sixty-day period is not inflexible, however. For some drivers, if they are making progress in treatment before the sixty-day period ends, the counselor may file the treatment certificate; and the DOL, at its discretion, may return the probationary license. The DOL requires, however, that the driver serve, at the minimum, a thirty-day suspension. Drivers who are also involved in treatment programs through the court must go through the same process to have their court treatment program approved by the DOL.

After regaining his probationary license, the driver must remain in treatment at the community alcohol center for as long as the counselor believes necessary. As a check on this, every three months for the entire two-year probation period, the driver must have his counselor fill out a treatment recertification form and send it to the DOL. If the DOL fails to get the treatment recertification form, it immediately resuspends the license. Typically, after the first six months to a year, treatment is no longer required by the community alcohol center, so the only contact the alcohol counselor has with the driver is when he comes in every three months to have his treatment certificate filled out. There is also a provision for the counselor, if he believes it necessary, to recommend to the DOL

that the driver remain in treatment beyond the two-year period. If the counselor recommends further treatment, the DOL extends the probationary license for as long as the counselor believes necessary.

Supervision of the driver's treatment program is performed by the treatment counselor through the filing of the three-month treatment recertifications. In some instances, the treatment counselor notifies the DOL of any problem with a particular driver before the filing of the treatment recertification form, although this is relatively rare.

When the driver completes the two-year probationary period and has filed a satisfactory completion of treatment certificate with the DOL, a full license is returned. If the driver fails to complete an alcohol treatment program, the DOL continues to suspend his license until he complies.

After a driver has completed his two-year probationary period, if he receives another alcohol entry within the next year, he is immediately placed on probation again for two more years and is subject to the same process again.

At present, officials of the Department of Licensing estimate that throughout the state about 3,200 to 3,500 drivers per year are placed on probation and required to attend an alcohol control interview, and that about twenty percent of those will violate the probation and be required to participate in the treatment certification process. The Driver Improvement Program as presently constituted has been in effect since January 1977.

The Habitual Offender Program

When a driver accumulates three mandatory suspension violations within a five-year period, he may be subject to being declared a habitual offender and will receive a mandatory five-year license revocation in addition to any suspensions for the individual offenses.

When the DOL determines that a driver has compiled three mandatory violations within the five-year period, it sends a copy of the driver's record to the prosecuting attorney in the county in which

the driver resides. It is the prosecuting attorney's responsibility to file the habitual-offender charge in superior court. In practice, only five of the thirty-nine counties in the state of Washington are presently prosecuting drivers under the habitual offender act. Since 1970, when the habitual offender act went into effect, 13,465 notices have been sent to the prosecuting attorney by the DOL and only 3,600 have been adjudicated as habitual offenders. Last year, 1,738 habitual-offender notices were filed and only 343 were adjudicated. At present there is an effort to make the habitual offender adjudication process the responsibility of the DOL rather than the courts, but officials of the DOL are not confident that this will happen.

If a driver is adjudicated as a habitual traffic offender, his license is revoked for five years by the Department of Licensing. A judge may order a stay of the revocation if he finds that a defendant has completed or is satisfactorily participating in an alcohol treatment program approved by the Department of Social and Health Services. The driver remains on the stay for the full period of the revocation and retains a full license as long as he is satisfactorily involved in a treatment program and is not convicted of another alcohol-related offense. The DOL monitors the driver's progress during the period of the stay. If the driver receives another alcohol-related conviction during this stay, the DOL orders the five-year revocation without a hearing, imposed from the date of conviction of the new offense. Over fifty percent of all persons adjudicated habitual offenders receive the stay.

The habitual offender who does not receive the stay or who violates the stay and receives the revocation, after serving two years of the revocation, may petition the DOL for a conditional license. The DOL will conduct a hearing at which the driver must:

- present three notarized affidavits from three nonrelated adults testifying as to the driver's change in drinking habits;
- the driver and one adult witness must appear and

testify as to the driver's change in drinking patterns;

- submit to an interview for purposes of diagnosing the drinking problem (this process is essentially the same as the process required for the Driver Improvement Program alcohol certification);
- sign a statement to the effect that he has not driven for two years; or
- pay a $10 fee and file proof of financial responsibility insurance.

If the driver satisfactorily completes these requirements, he is given a conditional license that is good for the balance of the five-year revocation. The license is normally unrestricted; however, there may be restrictions added to it. At the end of the five-year revocation period, if the driver has no new alcohol offenses and has satisfactorily completed alcohol treatment, he is reissued a full license.

Deferred Prosecution

Any alcohol offender, traffic or otherwise, is eligible for deferred prosecution. Under this statute, the defendant may request the court at arraignment to grant deferred prosecution for the purposes of becoming involved in an alcohol treatment program. If granted by the court, the defendant goes to a community alcohol center, or other court-appointed treatment program, where he submits to a diagnostic interview and is enrolled in a treatment program. If the court accepts the treatment plan it will hold in abeyance any further prosecution of the defendant for a period of two years. During this time the defendant must satisfactorily complete treatment and not receive any subsequent alcohol-related convictions. If the defendant satisfies these requirements, the charges against him are dropped at the end of the two years. If the defendant violates any of the requirements, the original court, after receiving notice of the new conviction, continues to prosecute the charge.

The DOL cooperates with the courts in the deferred prosecution

program by being the liaison between the courts. At the time that the deferred prosecution is granted, the court sends notice to the DOL which puts it on the driver's record. The DOL will monitor the record for two years to determine if any new alcohol offenses occur. If a new conviction is reported, the DOL will notify the original court that the deferred prosecution agreement has been violated.

Officials within the DOL indicate that of the 18,000 to 19,000 DWI prosecutions per year, only about five percent receive deferred prosecution.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

In terms of sheer numbers of DWIs required to participate in treatment programs through the DOL, the Driver Improvement Program is by far the largest of the three Washington programs. The program was started in 1970 when officials within the DOL concluded that little was being done with DWIs by the courts. These officials indicate that a big impetus for developing their own program was the emphasis placed on DWIs by the federally funded ASAP program in King County.

The procedures used for the Driver Improvement Program have changed since its beginning in 1970. When the program first started up and until 1976, no minimum standards for treatment programs existed. When a driver violated the terms of his probationary license by receiving a third alcohol entry within five years, he was simply required to file proof of completion or involvement in a treatment program. Often, a driver would attend a six-hour alcohol information school and this would satisfy his requirement. It became clear by 1976 that a program designed to identify and treat problem drinker-drivers could not be effective by requiring only alcohol education. In addition, no followup reports were required after the suspension was lifted, to determine if the driver was actively involved in treatment.

In late 1976 a task force was appointed by the DOL and the Department of Social Health Services to make recommendations on how

the Driver Improvement Program could be made more effective. Their recommendations were incorporated into the program in January 1977 when the DOL began to require that any treatment program in satisfaction of the Driver Improvement Program be approved by a counselor at a community alcohol center. In addition, the DOL began to require the ninety-day alcohol recertification certificates to be filed during the entire two-year probationary period, to ensure that the driver was actively involved in whatever treatment program was recommended.

Officials within the DOL feel these changes have made the program much more effective in ensuring treatment for problem drinker-drivers. They are also quite strong in their belief that treatment programs for DWIs throughout the state, whether mandated by the courts or the DOL, were given a strong push by the ASAP in King County.

INSIGHTS AND IMPRESSIONS

- The procedures used by DOL in the state of Washington to deal with DWIs are primarily intended to identify and treat problem drinker-drivers. There does not appear to be an emphasis on alcohol education for the first offender or social drinker. The courts appear to require alcohol education for social drinkers, but the court procedures are not standard and depend primarily on how much the judge believes in the necessity of education or treatment for DWIs.

- The procedures within the DOL appear to be unified and standard, as opposed to those of the courts, which seem to vary from jurisdiction to jurisdiction. This is important to the development of a health/legal system, because a large-scale comprehensive system benefits from standardization. Noted, however, that DMVs everywhere tend to be more amenable to routine procedures and standards than are courts, which are universally controlled by a judge with broad discretionary powers.

- The lack of prosecutions of habitual offenders appears to have made it difficult for the courts and the DOL to use the stay of revocation as an effective tool for motivating treatment. If more prosecutions for habitual offenders were processed, the high-risk drinker-driver would be more likely to receive treatment.
- As in several other jurisdictions we visited (most notably Pulaski County and Greenville) the federally funded ASAP apparently acted as a strong motivational force for the establishment of statewide programs for getting DWIs into treatment programs.

CASE STUDY SUMMARY FOR
PARK FOREST, ILLINOIS

THE HEALTH/LEGAL SYSTEM

The Court System

Driving under the influence (DUI) offenses are heard in Illinois in courts of original jurisdiction designated as circuit courts of the various counties. The Circuit Court of Cook County is divided into six municipal districts with branches of the court that hear traffic and ordinance cases in the various communities within the district. The court in the village of Park Forest, a suburb south of Chicago, is designated as Branch 24 of the 6th Municipal District.

The municipal district court's jurisdictional limits are as follows:

- less than $15,000 in controversy in a civil case;
- all criminal matters, handled from preliminary hearing through sentencing;
- prosecutions under municipal ordinances that may be designated as petty offenses (fine only) or misdemeanors (up to six-months' jail time).

DUI cases in Park Forest are prosecuted as petty offenses by the local prosecutor. Included within the Park Forest ordinance is the provision that allows the village prosecutor, at the court's discretion, to vacate a finding of guilt of the DUI offense after a specified period not to exceed one year. It is this provision that provides the legal basis for Park Forest's health/legal system. The village of Park Forest has been prosecuting DUIs under its own ordinance since 1960 with the same prosecutor.

All divisions and districts of the circuit court system in Illinois are courts of record. Not all of these courts, however, have facilities for keeping a record of the proceedings. The village of Park Forest provides the court reporter for recording all

ordinance proceedings in Branch 24.

Driver Licensing System

The authority to issue, suspend, or revoke the driver's license in the state of Illinois is vested in the secretary of state. For any conviction of DUI, the defendant's driver's license is taken by the judge at the time of conviction and sent to the secretary of state. The secretary of state's office takes action upon the license when it receives the notice of conviction and the license from the court.

Sanctions Imposed on the DUI Offender

Since Park Forest's DUI ordinance is civil in nature and not criminal, the only court-imposed sanction for a convicted DUI offender is a fine. There is no jail sentence allowed. The ordinance permits a fine of $100 to $500 for any DUI conviction and a fine of up to $500 on conviction of any companion traffic offense. All proceeds from the imposition of fines go to the village of Park Forest.

A major sanction for conviction of DUI is mandatory loss of driver's license. After receiving notice of the DUI conviction, and the license from the court, the secretary of state will revoke the defendant's license for a minimum period of one year, beginning from the date on which the license was taken. After the one-year period, upon proof of financial responsibility, the defendant is eligible to have his license restored, although it is not automatic. The defendant must reapply to the secretary of state for return of the license. Prior convictions of DUI or other evidence of a bad driving record may cause the secretary of state to revoke the license beyond the one-year period. A conditional license is available permitting driving to and from work within designated time periods, if the defendant applies to the secretary of state and establishes hardship as a result of the loss of license.

The Health System

Treatment facilities available to the DUI offender prosecuted by the village of Park Forest include:

Lutheran General Hospital. While Lutheran General primarily serves as the diagnostic and referral function for Park Forest DUI offenders, the Alcohol Treatment Center also provides outpatient services in the form of group and one-to-one counseling in addition to an inpatient program. Costs of inpatient treatment are usually covered by medical insurance or paid by an employer, while outpatient and diagnostic fees are paid by the offender. Fees are modest and are sometimes reduced or waived for the indigent. Lutheran General Hospital is about fifty miles from Park Forest and, as a result, very few DUIs from Park Forest will remain in treatment in Lutheran General beyond the evaluation period.

Ingalls Memorial Hospital. Located in Harvey, Illinois, a community about fifteen miles from Park Forest, it has a fully staffed alcohol treatment center. After diagnostic evaluation, offenders may be referred to Ingalls from Lutheran General, or in some cases may be referred to Ingalls directly from the court.

South Suburban Council on Alcoholism. Located in Park Forest, it is the primary counseling agency for Park Forest DUI offenders. This agency assists the family of the offender, makes referrals to AA, Alanon, or Alateen and to various treatment agencies within the 6th Municipal District. This agency also operates a rehabilitation and detox center and provides for placement in halfway facilities when indicated. The council is financed by a combination of fees based on an ability to pay, funds from the Illinois Department of Mental Health, and grants from municipalities, townships, and community chests.

While Lutheran General and Ingalls hospitals are the primary

treatment facilities for Park Forest DUIs, the Veterans Administration Hospital in nearby Maywood, Illinois, and the State Hospital in Elgin, Illinois, have inpatient alcohol treatment programs for those who have limited funds available for treatment.

THE HEALTH/LEGAL PROCESS

The decision to arrest a driver for DUI begins after the initial vehicle stop, usually for another moving violation. From observations of the movements of the driver and his physical appearance, the police officer will make an arrest for DUI. The offender is brought to the station house after arrest and issuance of a ticket charging the DUI offense. In the station, the offender is informed of the Illinois Implied Consent Law and given an opportunity to take a breath test. If the offender requests he is also given the opportunity to have a confirming blood test taken.

While the offender remains in custody, the police complete the requisite paperwork associated with the arrest. Results of the physical coordination and breathalyzer tests are recorded and a copy is given to the defendant. A "confidential report to the prosecutor" is completed detailing the circumstances of the arrest. The entire process, from the time of arrest until all of the paperwork is completed takes up to two hours.

After the arrest is completed, the driver is eligible to be bonded out. If someone will come to take him home, the driver is released by posting $100 cash bond and his driver's license at the police station. If the driver is unable to post bond, a hearing is held in front of a judge the next morning. If the driver is indigent, a personal recognizance is available; however, this is not generally favored by the court. The bond, less $10 costs, and the driver's license are returned at the time the case comes to a disposition stage. At the time of release on bond, the driver is given a bond receipt and a date on which to appear in court for arraignment.

Uniform traffic tickets charging the DUI and other traffic

offenses, any petitions and responses pertaining to refusal to take a breath test, and a copy of the bond receipt usually constitute the initial court file. The prosecutor's initial file, which is completed within a day or two following arrest, will include the completed confidential report to prosecutor form, and other materials relating to the DUI charge. The file also contains all of the information necessary to process the defendant through the Park Forest-Lutheran General DUI diversion program.

At the arraignment the defendant or his or her attorney is encouraged to examine the prosecutor's file. The prosecutor's secretary will usually explain the file and its contents to the defendant in chambers or outside the courtroom before araignment is accomplished. She will first explain the information sheet, which emphasizes the severity of the offense, and the traditional sanctions that may be imposed if the case proceeds to a traditional trial. Included in this form is an explanation of a step-by-step procedure for the diversion program.

After being given the opportunity to review the file, including the confidential report to the prosecutor, the defendant is informed of the two requirements for participating in the diversion program. These requirements are (1) that the defendant must be accompanied by "another significant person" (usually a spouse, parent, employer, etc.) during the diagnostic evaluation; and (2) that the defendant must be represented by an attorney.

The primary reason for requiring an attorney is that the defendant is waiving a number of rights, including right to jury trial and right of appeal, as well as stipulating to evidence recorded in the confidential report to prosecutor by agreeing to participate in the DUI program. The prosecutor wants to make sure that the defendant waives those rights and accepts those recommendations with a full understanding and guidance by competent counsel.

In the majority of cases, the defendant comprehends and accepts the court-controlled diversion health program, and a continuance of approximately three months is granted by mutual consent. If there is

any uncertainty regarding the choice of the program or proceeding to trial, the defendant is granted a month's continuance and urged to contact an attorney. The prosecutor states that because of the availability of the DUI treatment program, which is offered to and accepted by almost all offenders, there is such cooperation between the defense bar and the prosecution that even the weak cases will not be contested (e.g., low BACs). As a result, the village prosecutor has never had to move to withdraw a DUI case or go forward with a jury trial in the five years the program has been in existence.

During the three-month continuance the defendant is instructed to contact Lutheran General Hospital for an alcohol evaluation. Lutheran General's Alcohol Treatment Center schedules defendants and the accompanying significant persons' with them in groups of eight (four defendants) for an initial evaluation interview. Program personnel believe that the group interview is more effective because, besides being more economical, it helps to keep the interview in focus and to break down denial through the peer pressure of the group. The group session is followed by individual interviews.

The diagnostic evaluation is essentially a psychological alcoholism work-up. The emphasis is upon determining the existence of problems in the defendant's life, whether they be alcohol related or not, and to change defendant's behavioral attitude about driving following consumption of alcoholic beverages. The whole interview takes between 90 and 120 minutes. From the evaluation, the counselor will make recommendations transmitted back to the prosecutor, who in turn disseminates copies to the court, the arresting officer, and defendant subject and his attorney. There is a $25 fee charged all DUI offenders for the diagnostic evaluation session.

If the defendant is diagnosed as a social drinker, he or she will be given basic information on alcohol and its effects on the body and driving ability. This will be during the evaluation interview, or in some instances, during a second appointment. Beyond this, there is no further participation required before the defendant returns to court after the original three-month continuance.

If the diagnostic therapist and the defendant are unsure of whether the defendant has a drinking problem, he will be put on a three-month controlled drinking experiment. During this period, if the defendant is capable of remaining within a specified limit of drinks per day for the three-month period, without any exceptions, no further treatment is recommended. The therapist takes the word of the defendant and/or the other "significant person" as to whether the defendant abides by the predetermined consumption level. The defendant is told to contact the therapist if at any future time a safe consumption level is exceeded.

If the therapist determines that the defendant has a drinking problem, including those failing the controlled drinking experiment, a treatment recommendation is made in the report to prosecutor. Many of these defendants will immediately be referred to outpatient treatment programs provided by Lutheran General Hospital or, by way of referral, to South Suburban Council on Alcoholism. If inpatient treatment is required, arrangements for treatment are left to the defendant and his attorney. If the defendant is transient, Lutheran General will make a treatment referral to an agency selected from a nationwide network of known facilities dealing with alcoholics. Another evaluation is done by an intake worker for those defendants referred to South Suburban Council on Alcoholism before referral to AA or treatment, or commencing family counseling.

After referral of a defendant to another treatment program, the therapist at Lutheran General Hospital often becomes a treatment manager. He receives reports from the treatment or counseling agencies as to the progress of the client. It is estimated by the counselor for Lutheran General Hospital that about half, or approximately 150 of the 300 DUIs from Park Forest seen yearly, will be referred to further counseling or treatment or both. As the date approaches for the defendant's return appearance in court, the therapist at Lutheran General will file a report with the prosecutor describing the defendant's progress. For those defendants who were not referred to any inpatient or outpatient programs, the therapist

indicates that they have completed the evaluation and treatment procedure. For the remaining defendants, the therapist will indicate the status of the person's progress in treatment or counseling from his own records and/or reports that he receives from other agencies. When the defendant returns to court, the prosecutor will move the case to adjudication only if the defendant has completed the evaluation and, if referred to treatment or counseling, is actively involved and showing positive behavioral changes. If the defendant needs a longer period to stabilize his treatment program, the prosecutor will request further continuance of the case. If the defendant shows lack of willingness to accept treatment or counseling as recommended by the therapist, then those efforts will be abandoned and the case will proceed to trial without reference to any diagnostic evaluation or treatment efforts. This rarely happens, since defense attorneys persuade defendants to accept the therapist's recommendations.

When the defendant returns to court with a favorable report from the therapist, the prosecutor and defense counsel will file a joint petition in which the defendant agrees to plead guilty to the DUI offense and usually a companion moving offense. A fine of $100 plus costs of $10 is paid on the moving violation. A fine of $100 plus costs of $10 is entered but not paid on the DUI offense, since the parties request that a motion to vacate the finding on that offense be entered and continued for approximately one year. The petition states that the prosecutor will join in that motion to vacate at the end of the one-year period on the condition that there be no other alcohol-related offenses of any kind charged to the defendant in the interim. During the entire DUI program, up to the time that the motion to vacate the DUI guilty plea is granted, the defendant retains a driver's license unrestricted with regard to the offenses charged in Park Forest. In essence, the program makes a concession of avoiding mandatory revocation for conviction of DUI in exchange for, or as an incentive towards, participation in the diagnostic evaluation and treatment efforts. Violaton of the agreement set

forth in the joint petition by the defendant during the year's time with result in a hearing, and at the judge's discretion, denial of the motion to vacate the guilty plea to the DUI offense. This would mean that the penalties associated with a DUI conviction (i.e., driver's license revocation) would be imposed.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

The DUI program in Park Forest owes its existence to the village prosecutor. Before 1973, little was done to enter DUIs in treatment programs. As a result of reading ASAP material, the prosecutor began to consider treatment as a possible alternative to conviction in some cases where an obvious alcoholism program was evident. Several referrals were made to Lutheran General Hospital and were said to have had excellent results. By April 1, 1974 the preliminary experiments had convinced the prosecutor that the program should be made available to all persons charged with DUI in Park Forest without regard to prior history or extent of intoxication at time of arrest. Those excluded from the program were persons charged with other offenses, such as felonious conduct or driving on revoked licenses, which were matters subject to the jurisdiction of the state's attorney's office. In some instances, the state's attorney's office's office has made disposition in these cases so that the DUI charge is reduced to an ordinance violation in order for the offender to participate in the Park Forest-Lutheran General program.

The prosecutor believed that it was important to get the cooperation of the rest of the legal system, especially the police. He met with each police officer individually to explain the benefits of the program, both to the defendant and to the legal system.

According to the prosecutor, police support for the program came slowly. They did not immediately accept the idea of eventual dismissal of all their DUI arrests. Many police on the Park Forest force said that once they realized that the dismissals were available to everybody who was arrested, and not just a select few, they began

to favor the program. One aspect of the program that may have caused some disfavor was the procedure for dealing with DUIs who have been through the program previously. This procedure allows them to participate in the program again and therefore gain an opportunity for another dismissal. This procedure is neither supported by nor resisted by the prosecutor and is left to judicial discretion. Up until now, there have been very few of such cases, but several police officers expressed concern about DUI program recidivists' receiving a second chance. In an attempt to offset this concern, the prosecutor provides the police officer with a continuing account of the treatment procedures accepted by the offender and any progress made in the program.

After soliciting police participation in the diversion program, the prosecutor conducted a seminar with the local defense bar and solicited its cooperation and participation in the program. These attorneys accepted the program, presumably because it gave them an opportunity to help their clients who had drinking problems and at the same time save the client's driving privilege. Their enthusiasm apparently has not waned, and currently many defense lawyers introduce their clients into the treatment program shortly after arrest and long before arraignment in court.

Most of the judges were said to be hesitant at first about the program. Because of the increased number of DUI cases presented, they may have at first permitted the program rather than tie up the court call with contests. With the help of the few judges who were first converted to the program by the prosecutor, almost all of the judges now appear to be strong supporters of it. The defense bar has also been helpful in gaining the support of the judges.

In January 1975, the presiding judge of the 6th Municipal District was sitting in Park Forest and questioned the legal sufficiency of the local ordinance. At his suggestion, the ordinance was amended specifically to permit the motion to vacate procedure currently unchallenged by any of the judiciary.

Throughout the entire existence of the program it has been

self-sufficient. Funding for its operation is supported completely by the defendants. The $100 fine for the moving violation goes to pay for the adjudicative process and administrative costs associated with the program. The $25 fee paid to Lutheran General Alcohol Treatment Center pays for the evaluation procedure, and if any treatment is necessary, it is paid for by the defendant at a rate usually based on ability to pay.

INSIGHTS AND IMPRESSIONS

- The village prosecutor strongly believes that enlistment of police support was essential to initiation of the system, and that it must be continuing. The prosecutor also believes that the diversion program would suffer lack of police support if the police were not given data informing them of the progress of their arrestees through the health system. In 1973, DUI arrests more than tripled, going from 48 in 1972 to 146 in 1973. Since that time, yearly DUI arrests have averaged somewhere between 200 to possibly more than 300 per year for a community of 32,000 population.

- Participation and support of the defense bar has been interesting. It is extremely rare that a DUI will be taken to trial in Park Forest. Virtually every DUI participates in the pretrial diversion program. This is believed to be due mainly to the fact that participation in the program will ultimately effect a dismissal of the DUI charge, and as a result there will be no mandatory loss of license. That is the same result a defense attorney could have hoped for if he took the case to trial, but in the bargain, the prosecution gets an opportunity to change the attitude of the offender and reduce risk on the highways of the village. Note also that attorneys charge much less for handling these nonadversary proceedings.

- The Park Forest DUI program provides treatment for problem drinkers and a limited educational program for those who are diagnosed as social drinkers. The social drinkers receive some information concerning alcohol and alcohol abuse and are given

further education through the court process that varies according to the judge hearing the case. There is no formal informational program such as a DUI school.

- The Park Forest program was initiated and continues to be managed by a very highly motivated individual--the village prosecutor. All of the officials, including the village president and board of trustees, support his efforts. The Park Forest program was copied and adopted by the State's Attorney's Office of LaSalle County (Ottawa, Illinois) in November 1975 and has succeeded as implemented by the state's attorney and his staff.

- The cost of the health/legal program is said to be borne entirely by the offender, and therefore there is no federal or state funding for any part of the program. The estimated costs, exclusive of any inpatient treatment, include:

$25.00	Diagnostic Evaluation
$110.00	Fine and Court Costs
$250.00	Average Attorney Fee
$385.00	Total Cost

- Continuances by the defendant extend to period of court control over the offender that work to the benefit of the prosecution. Although many offenders are voluntarily introduced into the health/legal program well in advance of the initial court date. Processing time for the typical defendant is estimated as follows:

From Date of Arrest	
30 days	Initial court date
60 days	Diagnostic Evaluation
120 days	Second court date, initial disposition
485 days	Discharge, final disposition

CASE STUDY SUMMARY FOR
COLUMBUS, OHIO

HEALTH/LEGAL SYSTEM

The Court System

Operating a motor vehicle under the influence (OMVI) charges are heard primarily in the Franklin County Municipal Court. A court of limited jurisdiction, the municipal court has county-wide jurisdiction over all criminal misdemeanors including OMVIs. All OMVIs charged in the city of Columbus will be heard in the municipal court. There are several mayor's courts located in small towns in Franklin County surrounding Columbus that will hear OMVIs charged in those towns. However, no OMVI arrest in the city of Columbus will be heard in a mayor's court.

OMVIs charged in municipal court may be charged under the state statute or municipal ordinance depending on the police agency making the arrest. Arrests made by the Columbus City Police will be charged under the municipal ordinance while arrests made by other police agencies, such as the state police, will be charged under the state statute. There is an absolute right to a jury trial for OMVI in the state of Ohio. All jury trials are held in the municipal court, a court of record. Therefore, if a demand for a jury trial is made in mayor's court, which is not a court of record, the case will be transferred to municipal court. All appeals of OMVI are heard in the state appellate court and are on the record.

The Driver Licensing System

The authority to suspend the driver's license in the state of Ohio for conviction of OMVI is vested in the sentencing judge. At the time of sentencing, the court will take the license and send it, along with notice of a specified period of suspension, to the Bureau of Motor Vehicles (BMV). The BMV holds the license for the period of

suspension and returns it at the end of the period if there are no other suspensions or revocations in effect at that time.

Because power to suspend the driver's license is controlled by both the courts and the BMV, there appears to be a good deal of confusion in the operation of the system. According to one of the municipal court judges in Columbus, a common complaint is that drivers do not get their licenses back from the BMV immediately following the suspension period. He reports, however, that efforts are being made to coordinate more effectively the two agencies' operations, and that the situation is rapidly improving.

Sanctions Imposed on a Convicted OMVI

Court imposed sanctions for conviction of OMVI include a fine and jail. Both are at the judge's discretion except for a mandatory three-days in jail for any conviction of OMVI. Columbus is one of five locations in the state that has an alternative to the three-day jail sentence. Called the "alternative to impaired driving" (AID), it is a three-day inpatient alcohol education and evaluation program that satisfies the three-day jail requirement. AID is only offered to a defendant once, so for those multiple offenders who have been through AID before, a minimum of three days in jail must be served. The AID program will be discussed in more detail later.

The sentencing judge is responsible for imposing the license suspension for any conviction of OMVI in Ohio. He must suspend the license for a minimum of thirty days and up to three years. The normal procedure among judges in Columbus is to suspend the first offender for thirty days and multiple offenders for up to three years, depending on their prior record. After the thirty-day suspension period has been served, the judge may grant a probationary license. A judge in the Columbus municipal court reports that probationary licenses are often granted.

The Health System

Alcohol education and treatment facilities throughout the state

are operated on a local level. The Ohio Department of Health, through the Project Director for Alcohol/Highway Safety Programs, has attempted to standardize court education and treatment programs by establishing a set of guidelines for agencies to follow in setting up local alcohol programs that serve the courts. The project director acts as a consultant in the establishment of these local programs throughout the state and coordinates local courts and treatment programs.

The guidelines that the project director developed described six treatment processes that the court may use as alternatives or in addition to traditional sanctions. These six processes build on each other, with the first process being the most primitive and the sixth process being the most sophisticated. The processes are as follows:

- Class I--Traditional sanctions, plus a ten-hour alcohol education program.
- Class II--group counseling is added to the alcohol education program.
- Class III--the Class I or Class II process is made a condition of probation.
- Class IV--conditions of probation may include treatment or rehabilitation programs.
- Class V--the alcohol education program is an intensive three-day inpatient program.
- Class VI--presentence investigation for purposes of diagnosis and referral to treatment is used.

Over seventy communities in Ohio now have health/legal systems classified within one of the preceding six classes. Columbus is one of five Class V systems throughout the state. The only Class VI system is Cincinnati, the site of the former ASAP. The Project Director of Alcohol/Highway Safety Programs feels it is important to have a graduated system of health/legal systems so that a community can best fit its level of operation to its available resources.

Alcohol treatment and education facilities available within the Columbus area include:

- Regional Alcoholism Center (Mary Haven Inc.). Located in a building formerly occupied by a hospital, the Regional Alcoholism Center (RAC) has been in operation since 1968. It provides a broad range of alcohol treatment services including inpatient and outpatient programs for both males and females. There is also a detoxification center located at RAC that serves Columbus and its surrounding areas. All of these programs are financed through a variety of sources including federal and state funds, third party payments, and fees based on ability to pay.

  The RAC also houses the AID program, the three-day inpatient program primarily used by the court in lieu of the mandatory three-days in jail for conviction of OMVI. Essentially an alcohol education and evaluation program, it is financed entirely by a $115 fee assessed to all persons who attend the program.

- Alcohol Safety Program (ASP). The ASP is operated by the Columbus Health Department and has been in operation since 1970. It provides alcohol education and evaluation services to the court through a four-week program, meeting once a week. It is strongly AA-oriented, and often requires attendance at two AA meetings in addition to its four sessions. It also has a six-month counselling program, which it recommends for those clients diagnosed as alcoholic or problem drinkers. The ASP is completely financed by the Columbus Health Department and there are no fees charged.

The RAC and ASP are the two major alcohol programs in the Columbus area providing treatment and education services to the courts. Inpatient programs or halfway houses will generally be used as a result of a referral from the RAC or the ASP. Financing of these programs will vary to include state and federal funding, third party

payments, and fees based on ability to pay.

THE HEALTH/LEGAL PROCESS

After the decision to arrest for OMVI has been made and the arrest process has been completed, including administration of the breath test, the driver is eligible to be bonded out. The most commonly used bonding process is the appearance bond. Under this procedure, the driver posts ten percent of the usual $500 bond, or $50. After all of the court appearances have been completed, the driver is eligible for the return of $45 of the bond, with the extra $5 going toward the cost of the bonding procedure.

At arraignment, most OMVI defendants will plead not guilty. This is primarily to get the opportunity to obtain a plea-bargained reduction of the charge. A judge of the Franklin County Municipal Court estimates that greater than fifty percent of all OMVIs receive plea-bargained reductions, usually to reckless operation. Fortunately, it is the policy of many of the judges to impose the same alcohol education and treatment requirements on the OMVI reduced to reckless operation on those with OMVI convictions. These judges see the reduction as being beneficial to the defendant by obviating the requirement that he post financial responsibility insurance.

Very few of the defendants pleading not guilty will even go to trial. Those that do will usually go to a jury trial because of the belief that a jury will be more sympathetic to a charge of drunk driving. All trials on OMVI will be held within six months of the date of the arrest.

After plea or conviction of OMVI or a reduced offense, the defendant will enter the health/legal process. The difficulty in describing the health/legal process used after plea or conviction in Columbus lies in the fact that there is no uniformity among the thirteen judges in the Franklin County Municipal Court. While all of the judges use common treatment resources, the mechanisms used to get the OMVI from the court to the treatment agency vary from judge to

judge. The processes will be discussed separately, in order of the frequency with which they are used.

AID. The AID program as a condition of sentence is the most commonly used process by the judges in Franklin County Municipal Court. All but one judge use this method for at least some of their OMVI defendants, who have not been through AID before.

Typically, at the time of sentence, the judge imposes a fine and thirty days in jail. He will suspend twenty-six days of the jail sentence and $125 of the fine if the defendant completes the AID program. The defendant will also receive four-days credit for the other four days of jail if he completes AID. For those defendants who received a reduction of the OMVI to reckless operation there is no mandatory jail sentence. In these cases, the judge will often impose four days in jail and give the defendant credit for the four days if he attends the AID program.

If the defendant chooses to attend AID (and he almost always does) he is directed to the office of the AID coordinator, located in the Franklin County Municipal Court. There the defendant will receive an explanation of the program both orally and in writing; complete the necessary registration forms; and make arrangements to pay the $115 tuition fee. The defendant will then select the dates that he wishes to participate in the AID program and will be instructed when and where to report.

The AID program is conducted at the Regional Alcoholism Center every weekend, from 7:00 p.m. Thursday until 7:00 p.m. Sunday. The defendant must attend one weekend program in order to satisfy his court requirement. Each weekend program has an average class size of twenty-three. The first evening of the program is devoted to medical screening of the participants and orientation to the

program. At this time, much of the hostility of the participants will be dealt with. The rest of the weekend, the program consists of films and live lectures on alcohol use and abuse, seminars on the material presented in the films and lectures, and group and individual counselling. An evaluation of the defendant in terms of future treatment needs is also conducted. At the end of the program, the counselor discusses further treatment with each participant. It is estimated by counselors in the AID program that about eighty percent of the participants need alcohol treatment beyond the AID program. Unfortunately, when the defendant is only required to attend AID as a condition of sentence, the court will not enforce any treatment recommendations beyond the AID program. Consequently, few defendants participate in treatment beyond the AID program.

When the defendant completes the AID program, his registration form is so marked and returned to the AID coordinator who in turn sends it to the appropriate judge. If the defendant fails to appear for the program as scheduled or drops out during the weekend, notification is sent to the AID coordinator who will inform the sentencing judge. The judge can either impose the original sentence or give the defendant another opportunity to comply. One of the municipal court judges indicates he is always willing to give the defendant a second chance if he feels there will be cooperation.

AID Plus Probation. In some instances a judge will place a defendant on probation, usually for six months, after he completes the AID program. The reasons for placing a defendant on probation in addition to AID vary from judge to judge. One judge places everybody he sends to AID on probation for a period of time after AID, and another only places on probation after AID those who he

feels have a problem with alcohol. His diagnosis of an alcohol problem will usually be based on BAC and prior record.

The probation will usually have an open-ended condition requiring attendance in any treatment program to which the AID program refers the defendant. In some instances, the judge may specifically require treatment at the Alcohol Safety Program following the AID program. The defendant is assigned a probation officer at the time that he is placed on probation, and the treatment counselor and the probation officer jointly supervise him. If the defendant drops out of treatment during the term of probation, the probation officer is notified. If the probation officer is unable to induce compliance, a bench warrant will be requested for violation of probation. When he appears on the warrant, if the defendant is found guilty of violation of probation, the judge may impose the original sentence or reinstate probation. As with the AID program itself, judges are reluctant to impose the original sentence if they feel they can obtain cooperation.

Alcohol Safety Program. In some instances the judge chooses not to use the AID program, and instead sends the defendant to the Alcohol Safety Program. This happens primarily when the defendant has been through AID before, and is, therefore, not eligible to go again. The judge may also require the ASP after the reduction of an OMVI to reckless operation, when there is no mandatory jail sentence. When the defendant is referred to ASP because he has already been to AID it is usually a condition of probation to complete it after serving a minimum of three days in jail.

At ASP, the defendant will be required to complete the four-week education and evaluation course, and if ASP recommends, will be enrolled in its six-month group

counseling program. If the defendant is on probation, the ASP treatment counselor and the probation officer supervise him jointly. If the defendant is going to ASP as a condition of sentence, ASP reports attendance directly to the judge.

Presentence Investigation Plus Possible Probation. In a few instances, the judge will require a presentence investigation before sentencing the OMVI. The judge will allow about six weeks for the PSI. The PSI will usually be done by either the AID program or ASP in conjunction with the probation department. In cases in which the judge is unsure about whether the defendant is in need of alcohol treatment, he will require the defendant to complete either AID or ASP before sentencing. When the dependant returns to court for sentencing, the recommendations from the treatment program are given to the judge, who will make the decision to impose probation requiring alcohol treatment based upon those recommendations. Probation supervision is the same as in the previous processes.

Pretrial Health/Legal Procedures. In a limited number of cases, the defendant will be required to complete AID or ASP before receiving a reduction of the OMVI to reckless operation. The frequency of this practice will vary from judge to judge. One judge requires completion of AID before he will consent to a reduction of an OMVI. It is a common defense bar tactic to get the client actively enrolled in the ASP program at the time of asking the prosecutor for a reduction. If granted, the attorney will approach the judge at the time of sentencing and explain that his client has already completed the Alcohol Safety Program and, therefore, does not need further treatment. This practice is used especially to avoid the requirement by the judge of the inpatient AID program.

Traditional Sanctions. Almost all judges will at some time impose only fine or jail or both. This will happen usually with an out-of-state defendant or a defendant who has repeatedly been through court and whom no treatment program has helped. There is one judge in the Franklin County Municipal Court who does not believe in treatment alternatives to traditional sanctions and so all OMVIs appearing before him receive only the traditional sanctions.

EVOLUTION OF THE HEALTH LEGAL SYSTEM

Court referral of OMVIs to treatment on a regular basis began in 1971 with the establishment of the Alcohol Safety Program by the Columbus Health Department. The ASP was originally developed as a component part of the city of Columbus' proposal to the Department of Transportation for a federally funded ASAP. When the ASAP was awarded to Cincinnati instead, the program was maintained, providing alcohol education and treatment services to the courts as well as other sources. At the same time the Project Director of Alcohol/Highway Safety Programs was promoting the development of court alcohol programs throughout the state. It was during this period that, using the experiences of ASAPs around the country, he developed the health/legal system classifications that are currently used to promote and distinguish court alcohol programs around the state.

In 1976, a recently appointed municipal court judge became disenchanted with the three-day jail sentence and wanted to develop a treatment alternative to it. He became aware that the project director had helped establish an inpatient alcohol education program in Athens, Ohio, which was used in lieu of jail. Through the efforts of the judge, the project director, and AA in Columbus, a similar program was established in Columbus. Called the AID program, it was housed at the already existing Regional Aloholism Center and its

first operations began in October 1976. It was extremely important to all those concerned in the development process that the AID program be fit into existing treatment resources and be completely self-supporting. The founders reasoned that by doing so, they would eliminate future funding problems when common alcohol treatment funding sources dried up.

Except for a highly motivated few, judges did not make great use of the AID program as an alternative to the three-day jail requirement at first. However, after they began to see the purposes of the program and became used to its operation, they began to use it frequently, and now it is by far the most widely used alcohol treatment program in the municipal court. All but one judge regularly refer multiple offender OMVIs to the program. The Alcohol Safety Program, which was providing the same alcohol education and evaluation services before AID, now serves primarily as a treatment agency to which AID will refer clients for further treatment. The establishment of these roles for both treatment agencies was not without friction, but at the present time, the relationship between AID and ASP is relatively smooth.

The AID program itself has not changed its processes significantly since its beginning in October 1976. Since that time, a spokesman for AID reports, it has handled 1,833 defendants from the court, including both OMVIs and reckless operation reduced from OVMI. He also reports that so far, there has been a four percent recidivism rate in the Columbus courts for participants in the program.

INSIGHTS AND IMPRESSIONS

- The site visits appear to indicate that large jurisdictions, like Columbus and Portland, with large numbers of judges, are difficult to organize for coordinated use of the health/legal system. Like Portland, Columbus had as many different processes of referral as it had judges. Similarly, when a jurisdiction has many judges, it almost certainly will have varying degrees of support among them.

Any developer of a health/legal system should take this into account.

- When starting a health/legal system, the operations of the system should be fit into existing health and legal processes, and wherever possible into existing budgets. As the primary informant in Columbus explained, in developing its system, Columbus used existing branches of the court and health system; drew cross-overs between the branches so the system would be functional; and set a fee to cover the cost of putting the people through the system.

- All of the people involved with the AID program feel very strongly that the intensive three-day alcohol education program is much more effective for motivating behavior change than the normal once-a-week course lasting four to six weeks. They all agree that in the normal weekly course there is a certain amount of time wasted each week reacquainting the counselor with the clients. When the program lasts three consecutive days, only one acquainting period is necessary.

- As in most other jurisdictions, before the full cooperation of the court was granted to the health/legal system, a period of adjustment was necessary. This applies not only to the judges, who took some time to accept treatment as an alternative to traditional sanctions, but also to the other personnel in the court, who took time to accept the presence of health/legal personnel, such as the AID Coordinator, as co-workers.

CASE STUDY SUMMARY FOR
LAFAYETTE, LOUISIANA

THE HEALTH/LEGAL SYSTEM

LATAP, the health/legal program described in this case summary, ceased operation 30 September 1978. At the time of our visit, it was virtually assured that a less comprehensive program, termed "mini-LATAP," would be funded in its place sometime before the end of 1978. The reason for LATAP's demise and a brief description of the proposed mini-LATAP are included in the section on the Evolution of the Health/Legal System.

The Court System

The state of Louisiana has a unified court system under the supervision of the Judicial Administrator of the Louisiana Supreme Court. The courts within Louisiana that handle Operating Under the Influence (OUI) are the Louisiana District Court and city courts throughout the state. The district court has exclusive jurisdiction over OUIs charged third or subsequent offense (a felony) and concurrent jurisdiction. The city courts have jurisdiction over OUIs charged first or second offense (a misdemeanor).

In Lafayette, all first- or second-offense OUI arrests made within city limits are filed and heard in Lafayette City Court. Third- or subsequent-offense OUI arrests made within city limits are filed in district court. All OUI arrests made outside of city limits by the state police or parish sheriff, regardless of offense, are filed in district court. Most OUI arrests within Lafayette city limits are made by city police and are charged first or second offense. Hence, most OUIs within Lafayette are filed in city court.

All OUIs in city court, as well as district court, are charged under the state criminal code, and are prosecuted by an assistant district attorney. Since OUIs are charged under the state code

rather than a municipal ordinance, it is within the discretion of the district attorney to file an OUI offense normally heard in city court in district court, because the two courts have concurrent jurisdiction. In practice this is rarely done, however, since the adjudication process goes much more quickly in city court. Once filed in either city or district court, the case cannot be transferred. However, there seems to be some debate over whether several Louisiana Supreme Court decisions forbid that, and the practice has occurred in other areas of the state to a limited extent in the past.

The district attorney may amend or dismiss an OUI charge at any time up to verdict without the approval of the court. In Lafayette City Court, the district attorney makes a special effort to explain the reasons for any amendments or dismissals. There is no right to a jury trial in first- or second-offense OUI in Louisiana, in either city or district courts. All fines collected as a result of an OUI conviction in Lafayette City Court go to the city of Lafayette. Both district court and Lafayette City Court are courts of record. As a result, appeals are made on the record, directly to the Louisiana Supreme Court, as in all criminal cases in Louisiana.

It is worthwhile to mention the distinction between an actual offense and an offense as charged, because Louisiana's procedures are similar to those in many states. For an OUI to be a second or subsequent offense, it must have occurred within a five-year period of the previous offenses and it must be charged as such. If it is not charged as a second or subsequent offense, for purposes of punishment (with the exception of suspension of the drivers license) it will be a first offense. As a result, the system will consider a person with previous OUIs to be a first offender if he is not charged with a multiple offense.

In Lafayette, if the district attorney is unable to find a previous OUI that has been improperly recorded, or the previous OUI offense occurred at a time when the defendant was not afforded appropriate constitutional rights, an actual second OUI offender will

be charged as a first offender. This does not happen on a regular basis, however, according to the Judge of the Lafayette City Court, who estimates that where prior records are clear, ninety percent of actual second offenders are charged as second offenders.

With third offenders, the district attorney tends not to charge the third offense (a felony) unless it is an aggravated case. Normally, the third offender will be charged as a second offense (a misdemeanor). As a result, third-offense charges are carefully scrutinized, and those that are charged third offense tend to be very good cases.

The Driver Licensing System

Authority for issuance, suspension, or revocation of a convicted OUI's license is vested in Driver's License Control, a division of the Louisiana State Department of Public Safety, located in the state capital, Baton Rouge.

Driver's License Control suspends a convicted OUI's license after receiving notice of conviction from the convicting court. Officials within Driver's License Control say that reporting of convictions by the courts is generally good, with improvement constantly being made.

The Department of Public Safety's authority to suspend licenses for conviction of OUI is exclusive except for the following two exceptions:

- For a first-offense OUI a judge may order that Act 211 be invoked. By invoking Act 211, the judge recommends to the Department of Public Safety that they not suspend the OUI first offender for the mandatory sixty-day suspension period. The Department of Public Safety must follow this recommendation. Act 211 is used quite extensively by judges throughout the state. In rare cases, the department recommends that the judge invoke the act when he has not done so on his own initiative. Finally, in order to qualify for Act 211, the defendant must file with the department proof

of compliance with SR22 (financial responsibility insurance).

- An OUI offender can apply to the district court in the parish in which he resides for a hardship license. If the court agrees that a hardship license should be issued, it orders the Department of Public Safety to issue the license. The hardship license is a full license and not a restricted permit.

  A hardship license is available only to a person who's license has not been suspended before. An OUI third offender who's license was suspended or received a hardship license as a result of his second offense is not eligible for the license. Second offenders who receive Act 211 as a first offender are eligible to apply for a hardship license. Second offenders who did not receive Act 211 and were suspended as first offenders may be eligible for a hardship license at the court's discretion. Since most first offenders receive Act 211, this situation rarely arises. It is estimated by an official of the Department of Public Safety that about seventy-five percent of those eligible to apply for a hardship license will actually apply. Those that do not generally are unable to avoid the cost of financial responsibility insurance. He further estimates that sixty to seventy percent of those that apply are awarded the hardship license by the court.

Sanctions Imposed on the Convicted OUI

Court-imposed sanctions for the OUI first-offender are all discretionary. The judge may impose a fine or a jail sentence or both and may place the defendant on probation for up to two years.

Multiple offenders are required by statute to serve a mandatory minimum jail sentence as follows:

- second offense within five years - 125 days in jail
- third offense within five years - one year in jail
- fourth offense within five years - ten years of hard labor in the state penitentiary

There is, however, a provision of the state that allows the sentencing judge to suspend the jail time, making the mandatory jail requirement, in practice, discretionary. In Lafayette City Court, it is the practice of the judge to initially require OUI second-offenders who have previously participated in the LATAP program to serve the 125-day jail term and, after thirty to forty-five days, place them on probation and suspend the remainder of the jail term on the condition that they participate in treatment. Work release is usually granted to second offenders during their time spent in jail. It appears that jail sentences are also required in district court for multiple offenders. However, they are not always the mandatory mimimum sentence.

The suspension or revocation of the driver's license by the Department of Public Safety is a major sanction for conviction of OUI. The suspension period for a first-offense OUI conviction is sixty days, and as was discussed in the previous section, Act 211 is available to prevent suspension on first offense. In Lafayette City Court, the judge invokes Act 211 for anyone participating in the LATAP program. The period of suspension for second or subsequent offenses within a five-year period is one year. As was discussed previously, a hardship license is available to those who's license has not been suspended previously. After suspension for OUI, even though Act 211 or the hardship law may be applied, a convicted OUI must file proof of financial responsibility for three years.

In addition to its suspensions for individual convictions of OUI, the Department of Public Safety is also responsible for notifying the district attorney of all those people eligible to be declared habitual traffic offenders under the Louisiana statute. When a driver accrues three major violations (OUI, reckless operation, or homicide resulting from use of an automobile) within five years, his

record is sent to the district attorney in the parish in which he resides. The district attorney is obligated to file a civil action to declare the driver a habitual traffic offender. If convicted under this statute, the driver's license is revoked for five years. Violation of the revocation calls for one to five years in the state penitentiary. In practice, not all of those eligible to be declared habitual traffic offenders are actually charged. It appears to be up to the local district attorney whether the case is actually filed. Officials with the Department of Public Safety say that compliance is steadily increasing.

The Health System

Within the Lafayette area there are three major treatment or education programs available for the OUI offender.

LATAP Education Program. In addition to its diagnosis and referral function for the court, LATAP provides the alcohol education school that most OUI offenders must complete. The four school sessions over a two-week period are each two and one-half hours long. The program is essentially didactic lectures on the effects of alcohol on the body and driving. Referrals are primarily from Lafayette City Court. However, the district court will use the program also. The LATAP educational school is funded by the Louisiana Department of Education from a grant by the Louisiana Highway Safety Commission. There is no charge for the school.

The Court Sobriety Program. Most of the clients for the Court Sobriety Program are required to come by either the Lafayette City Court or the district court. In has an Alcoholics Anonymous orientation, due in large part to its director, a longtime member of AA. He gives a lecture once a week for those required to attend and concentrates on getting his clients actively involved in AA. He also interviews and counsels clients who have been incarcerated

as a result of a second or subsequent OUI Offense.

The Court Sobriety Program, located physically in the Lafayette City Court, is funded directly by the city of Lafayette.

Substance Abuse Clinic. The Substance Abuse Clinic is a part of the Lafayette Mental Health Clinic coordinated by the Louisiana State Office of Health and Human Services. It receives a significant number of its clients from both the Lafayette City Court and the district court.

The clinic is therapy oriented--providing both group and individual counseling. Any client referred by the court will have an intake interview performed by a counselor to develop a treatment plan. Antabuse and other chemotherapy are sometimes used. The clinic is also the agency that provides diagnostic and referral services to people in the detoxification unit of Charity Hospital.

The Substance Abuse Clinic is funded by the local Mental Health Clinics, which exist as a result of state and federal grants.

THE HEALTH/LEGAL PROCESS

The following process description traces the course of an OUI arrest made within the city of Lafayette and filed in Lafayette City Court. Instances where arrests made within Lafayette end up being filed in the district court will be noted.

Because of a vigorous selective enforcement program, funded through the Louisiana Highway Safety Commission, arrests for OUI increased dramatically during the three and one-half year period of LATAP. At its operational maximum, the Lafayette city police had six full-time officers patrolling, one per car, specifically for OUI arrests. These officers made approximately fifty percent of all of the department's OUI arrests. The other fifty percent, made by the rest of the force, by itself exceeded the total number of OUI arrests

made by the whole force prior to the selective enforcement.

After the arrest, a copy of the ticket, the alcohol influence report form, and the arrest report are sent to the district attorney. The district attorney reviews these materials and decides whether to file the charges. In ninety percent of the cases, the charges are filed in city court. Of the remaining ten percent, the following may occur:

- the district attorney may determine that the arrestee is a third or subsequent offender, in which case the charges are filed in district court;
- the district attorney may find that the breath test was not at or above the Louisiana presumptive level of .10% w/v, in which case he files the charges as a reckless operation;
- in rare instances, the district attorney sees a technical difficulty in the case and dismisses the case at the charging stage.

If the district attorney decides to file the case in city court (about ninety percent of the time he does) it is filed at this point.

After filing of the OUI but prior to arraignment, the city court uses an interesting procedure called the prearraignment briefing. About thirty minutes before arraignment, all OUIs due to be arraigned that day meet at the court. There, the director of the Court Sobriety program, the public defender, and a representative from LATAP "brief" the arrestees on what is about to happen to them. They are informed about the LATAP program and the penalties for OUI, and the necessity of filing financial responsibility insurance. The plea of no contest is explained to the group and each one is allowed to sign it if he wishes. The public defender determines which persons are second offenders and speaks to them separately, since a mandatory jail sentence is involved. For persons who want to plead not guilty, the public defender determines if they are indigent, and, if so, offers to take their case. If an arrestee is not indigent and wishes to plead not guilty, he is informed that he should consult an

attorney. Those OUIs who have an attorney before the briefing are allowed to skip the session. However, this number is very small.

After the briefing, the group appears in court for formal arraignment. Some ninety percent of those OUIs at the briefing plead no contest. The remaining ten percent plead not guilty. Of this ten percent, only about three percent plead not guilty because they want to have a trial. Most of the not guilty pleas are entered as a stall so that the defendants can have time to raise money for the fine. When the defendants learn that they can have time to pay the fine, most of them change their plea to no contest.

Those OUIs pleading not guilty then have a trial date set, or in rare instances when preliminary motions may be in order, a date for the motion. Often an OUI will plead not guilty so that he can wait until the trial date in the hope that the arresting officers will not appear and the case is dismissed. This tactic is rarely fruitful. In addition, some OUIs will plead not guilty, in an attempt to obtain a plea bargain from the district attorney. It appears, however, that there is very little plea bargaining in Lafayette City Court. If a plea bargain does occur it is generally because of a perceived weakness in the case by the district attorney. If the district attorney plea bargains an OUI, he reduces it to a reckless operation of a motor vehicle (ROMV), and even in these instances the defendant is required to attend the LATAP educational program.

If an OUI actually goes to trial, it is usually set for a month after arraignment. The whole trial takes about two hours, and most defendants who go to trial are convicted of OUI.

After plea or conviction, the health/legal process may be classified into three groups of defendants.

> All OUI First Offenders. After plea or conviction, all first offenders are given a sentencing date approximately one month in the future and referred to LATAP. At LATAP the defendant is given an evaluation interview and enrolled in the alcohol education class. The evaluation interview, which lasts from thirty minutes to two hours,

consists of administration of the Mortimer-Filkins questionnaire and a personal interview. After completion of the interview and the four-session alcohol education class, a presentence report prepared by a LATAP counselor classifies the defendant as either a social, excessive, or problem drinker, and makes treatment recommendations. Over the course of the LATAP program, forty-seven percent of the clients were diagnosed as social drinkers, thirty-three percent as excessive drinkers, and twenty percent as problem drinkers.

When the defendant returns to court for sentencing, he is sentenced according to his drinker classification:

a. Those classified as social drinkers are given a period of unsupervised probation, but are not required to participate in treatment.

b. Those classified as excessive drinkers are placed on "court probation" for six months and required to attend at least eight sessions of the Court Sobriety Program.

c. Those classified as problem drinkers are placed on "court probation" for one year and required to attend at least sixteen sessions at the Substance Abuse Clinic. In some instances, if the counselor feels that the Court Sobriety Program will be more efffective, the same number of meetings there are substituted for the Substance Abuse Clinic.

All first offenders who participate in the LATAP program are granted Act 211 so that they can maintain their driver's license. Supervision during the period of "court probation" is performed by the LATAP counselor who receives attendance reports from the respective treatment agencies.

Second Offenders Not Previously in LATAP. The same presentence procedure described for first offenders

applies to second offense OUIs who have not been to LATAP before. When the defendant returns to court for sentencing, he is placed on state probation for one to two years and required to attend twenty-four sessions at either the Court Sobriety Program or the Substance Abuse Clinic, whichever the LATAP counselor feels would be more effective. State probation supervision is more formal than court probation; the defendant is assigned a state certified probation officer to supervise his case.

Second Offenders Previously in LATAP. The LATAP program is a one-time opportunity. If a second offender has been through LATAP before, he will be sentenced to the mandatory 125 days in jail. While the defendant is in jail, he is interviewed by the director of the Court Sobriety Program who then makes the treatment recommendation to the judge. After thirty to forty-five days in jail, the defendant is placed on state probation for two years and required to participate in the Court Sobriety Program or Substance Abuse Clinic.

Third and Subsequent Offenders. These cases are sentenced in district court. According to a state probation officer, after serving an initial jail sentence of usually one year, many will be placed in state probation to participate in treatment at either the Court Sobriety Program or the Substance Abuse Clinic. It is stressed, however, that this is dependent on the sentencing judge, as some judges are more willing to require treatment than others.

All OUIs sentenced in city court to treatment at either the Court Sobriety Program or the Substance Abuse Clinic are supervised by a joint effort between the treatment agency and the supervising probation officer. (First offenders have an LATAP probation officer, second offenders have a state probation officer.)

Both treatment agencies notify the probation officer if a person drops out of the program. The probation officer usually gets in touch with the defendant, either by phone or letter, to attempt to get the person back into compliance. If this is to no avail, the probation officer files a "rule to show cause" in city court, where the defendant must appear in front of the judge and explain his absence from treatment. According to probation officers with the LATAP program, this form of enforcement is necessary in only about ten percent of the cases. If such enforcement is necessary, the judge may revoke the defendant's probation and impose a jail sentence or continue probation, with or without an extension of the probation period. Typically, the judge will continue probation.

Once a defendant completes his treatment program, notice is sent by the agency to his probation officer. The defendant must then complete the probationary period without any further alcohol involvement with the courts, and his case is closed.

EVOLUTION OF THE HEALTH/LEGAL SYSTEM

Two men, were largely responsible for the founding of the LATAP program in Lafayette. One, the manager of LATAP, is a professor at the local college, the University of Southwestern Louisiana. The other is the local judge of the city court.

Before LATAP was even conceived, the professor was the coordinator of the Defensive Driving Program in Lafayette, a state-funded education program for traffic violators. Most of his referrals came from the local judge's court. When the judge heard of the availability of funds for an alcohol program through the Louisiana Highway Safety Commission, he contacted the professor and urged him to submit a proposal incorporating the treatment agencies already

being used by the court--the Court Sobriety Program and the Substance Abuse Clinic. The proposal was accepted and the LATAP program was established. The judge became the prime contractor and the University became the subcontractor. All of the logistics and administration were performed by the University. The program as described in the previous sections has continued essentially unchanged, except for minor adjustments, for three and one-half years, at an average annual cost of $120,000. All the funds have come from the Highway Safety Commission.

The Highway Safety Commission is a board appointed by the governor of Louisiana to determine how federal funds provided under section 402 of the Highway Safety Act will be distributed for highway safety programs throughout the state. The commission employs a full-time administrator who handles requests for grants and sees that they are submitted to the commission for approval or rejection. While in Lafayette, we had an opportunity to talk to the administrator for the Highway Safety Commission. It was clear that he believed that the LATAP program was worthy of being re-funded. However, it was equally clear that the commission was not in favor of re-funding it because it believed the program had shown no significant reduction in alcohol-related traffic fatalities. As a result, the LATAP funding from the Highway Safety Commission was not renewed when it expired September 30, 1978. The manager of the LATAP program does not agree with the commission's conclusions. He conducted an analysis of data collected during the period of LATAP and believed that the program was responsible for a significant reduction in alcohol-related traffic fatalities.

Attempts were made to fund a "mini-LATAP," but failed because of the reluctance of the governing authorities to support a companion funding of a selective enforcement project, allegedly because of a shortage of police personnel. However, the City Court, in cooperation with the state Department of Education, through funding from the Louisiana Highway Safety Commission, has expanded its Driver Alcohol Rehabilitation Program (DARP) and is trying to make it

self-sustaining through a fee approach system. The local Safety Council chapter will join in this effort. The DARP program is not as comprehensive and extensive as the former LATAP, but does offer an approach for survival of the health/legal system.

INSIGHTS AND IMPRESSIONS

- Important to the operation of the Lafayette health/legal system is the presence of a consistent and fair judge. Everyone within the system made a point of mentioning that they know that all OUIs were going to get equal treatment. The judge appears to command respect from the people who work for him, and this respect seems to manifest itself in hard work and concern.

- A large percentage of drivers charged with OUI plead guilty at arraignment. There appear to be two reasons for this. First offenders know that they will be able to keep their license even after pleading to the OUI. Therefore, there is no reason to plead not guilty to avoid any harsh mandatory sanctions. More significantly, the prearraignment briefing session appears to be effective in giving the defendant an opportunity to "learn the ropes" about OUI before he actually appears in court. By the time he appears he is well-informed about what will happen to him, and there is no real need to plead not guilty, unless he really wants a trial. The city court's unusually fast trial docket appears to be a result of the briefing session. Of course, the fact that there are no jury trials also contributes to the fast trial docket.

- LATAP's funding difficulties illustrate the problems that can arise when a program is not self-sufficient or supported by a funding source more closely allied with the program. By developing a set of client fees or obtaining at least part of the program funding from court or city funds, a similar program might be able to avoid LATAP's funding difficulties.

- As in other small jurisdictions we visited, the development of the LATAP program was largely the result of a highly motivated person

within the legal system. In this case it was the local judge. He, in turn, recruited another highly motivated and concerned person to run the program--a professor at the local college. Without the effort put forth by these two individuals, the LATAP program probably would not have developed.

- As in all of the jurisdictions visited, it took a special program to make the essential link between the court system and the health system. Components of both existed before LATAP, but it took the LATAP grant to connect the two systems.

CASE STUDY SUMMARY FOR
GREENVILLE, SOUTH CAROLINA

THE HEALTH/LEGAL SYSTEM

The Court System

First-offense Driving Under the Influence (DUI) is heard in magistrate's court. This court, known in some other areas as justice of the peace or municipal court, is not a court of record, and the judges in these courts are not required to be licensed attorneys. Most traffic offenses other than serious violations are heard in these courts. Any appeal of a finding in the magistrate's court is made de novo in circuit court.

The circuit court is the court in which all multiple-offense DUIs are heard. A person is a DUI multiple offender if he is charged with a DUI within ten years of conviction of a previous one. There is only one level of original criminal jurisdiction in the South Carolina court system: the circuit court. As a result, all crimes--felonies and misdemeanors--are heard in the circuit court. Appeals may be made to an appellate court, but are made on the record. The right to a jury trial for any prosecution in circuit court is absolute. The only way that a defendant can obtain a bench trial is by the joint approval of the defendant, the prosecution, and the court.

The Driver Licensing System

Authority for issuance, suspension, or revocation of a convicted DUI's driver's license is vested in the Motor Vehicle Division of the Department of Highways and Public Transportation. Located in Columbia, the state capital, the department automatically suspends or revokes a driver's license for conviction of DUI at the time it receives notice of the conviction from the court. According to officials in the Motor Vehicle Division, reporting of DUI convictions

is generally very good, especially in the larger population areas, including Greenville. There is no provision for a presuspension hearing. There is also no provision in South Carolina for a hardship or restricted license. There is only one exception, the provisional license law, for DUI first offenders. This is discussed in the following section.

Sanctions for the Convicted DUI

All court-imposed sanctions for first- or multiple-offender DUIs are discretionary. The judge may assess a fine or a jail sentence for up to five years or both. The only mandatory jail sentence for traffic offenders in South Carolina is for third-offense Driving Under Suspension (DUS). For such offenders a jail term of forty-five days to six months is required.

The suspension or revocation of the driver's license is a major sanction imposed against a DUI. Once the Department of Highways and Public Transportation receives notice of conviction of a DUI, his license is suspended according to the following schedule:

first offense within ten years - six months
second offense within ten years - one year
third offense or more within ten years - two years

First-offense DUIs are eligible for a provisional driver's license during the six-month suspension period if they:

- are currently enrolled in an Alcohol Safety Action Program school; and
- have filed proof of compliance with SR22 (financial responsibility insurance) with the Department of Highways and Public Transportation.

The provisional license, which is an unrestricted license, is granted immediately when the Department of Highways and Public Transportation receives notice of compliance with the two criteria. The license can be withdrawn at any time during the six-month period if the DUI is convicted of another traffic violation for which four or more points are assessed (hazardous moving violations); or his

SR22 insurance is canceled; or he fails to complete the ASAP school.

Most first offenders take advantage of the provisional license law. If a first offender does not obtain a provisional license, it is generally because he cannot afford the cost of SR22 insurance.

Besides suspension of the driver's license for any single DUI conviction, the Department of Highways and Public Transportation is also responsible for identifying drivers who are subject to prosecution as habitual traffic offenders. When the Motor Vehicle Division determines that a person has had three major taffic violations (DUI, DUS, reckless driving, or negligent homicide involving an automobile) or ten minor violations within three years, they send a notice to the solicitor in the district in which the offender resides. It is then the obligation of the solicitor to prosecute the driver as a habitual offender. Conviction requires a five-year revocation of the driver's license. According to officials within the Department of Highways and Public Transportation, many solicitors do not routinely file habitual-offender charges when notified. While the action is mandated by statute, there does not appear to be anyone enforcing the requirement. Greenville does appear, however, to be one of the districts that does routinely prosecute drivers under the habitual offender act.

Health System

Alcohol treatment services are coordinated throughout the state by the South Carolina Commission on Alcohol and Drug Abuse, located in the state capital, Columbia. Each county contracts with the state office to provide treatment and education services within its own county.

State and county officials generally agree that this organizational structure is the most effective. By having a degree of control through the contractional process, the state office can assure that treatment services are relatively uniform throughout the state, and by maintaining local control, each county can tailor its treatment services to the needs of its community.

In Greenville, the contracting agency is the Greenville County Alcohol and Drug Abuse Commission. At present it is independent but expects to become a county agency in 1980. The Commission is composed of four subdivisions, each providing a different type of alcohol treatment service:

- **Intervention and Prevention** runs the ASAP school and provides initial diagnosis and referral of clients entering the agency.
- **Counseling Service** provides group and individual counseling.
- **Inpatient Treatment** runs the county's halfway house for alcoholics--the Bonner-Kidd Home.
- **Detoxification Center**, a three- to five-day residential center, provides a medically supervised process of withdrawal from alcohol or drug intoxication.

Greenville County treatment services are typical of those available in the three major metropolitan areas in South Carolina--Greenville, Columbia, and Charleston. The range of treatment services available in the other areas of the state is much more limited. At the very minimum, however, all regions within the state have an ASAP school, so all first offenders have at least access to the school in satisfaction of the provisional license requirement.

Funding for the Greenville County Commission on Alcohol and Drug Abuse comes from several sources. The state funds provided as consideration in the contracts with the counties come from a tax on the sale of alcoholic beverages throughout the state. Each county receives that portion of the total tax revenues that is collected on sales of alcohol within that county. In addition to the state funds, Greenville County also grants a substantial amount to the commission.

Client fees make up another important source of funding for alcohol treatment services in Greenville County. All first offenders may pay a $50 fee before they are enrolled in the ASAP school, and

multiple DUI offenders are assessed a $75 fee for treatment services provided them by the commission. Grants from federal programs make up the balance of the commission's operating budget.

The eventual goal of the Greenville County Commission is to raise half of its operating budget from client fees, with the other half coming from a combination of state and county funding.

THE HEALTH/LEGAL PROCESS

First Offenders

After arraignment in magistrate's court, DUI first-offenders are given the opportunity to enter a plea. According to a spokesman for the solicitor's office, a substantial number plead guilty. Those who plead not guilty are then set for trial. For those wishing a trial, the prosecutor in the magistrate's court may offer a reduction of the charge to reckless driving. Generally, only multiple-offense DUIs are reduced, and only when the solicitor feels there is a weak case and the BAC is below .15% w/v. It is extremely rare for a first-offense DUI charge to be reduced in Greenville County. Persons receiving a plea bargain are not required either by the provisional license law or the court to enter treatment or education.

Upon conviction or plea of guilty to DUI first offense, the defendant is then informed of the opportunity to maintain his driver's license under the provisional license law. As a practical matter, most know of the law at the time of arraignment, contributing in large part to the high percentage of guilty pleas at arraignment.

Should the defendant wish to take advantage of the provisional license he must comply with the two requirements: enrollment in the ASAP school and posting of financial responsibility insurance.

About eighty percent of the first offenders obtain the provisional license. Those who do not generally are unable to afford the cost of financial responsibility insurance.

When a first offender enrolls in the ASAP school, two copies of the enrollment form are sent to the South Carolina Commission on

Alcohol and Drug Abuse. One of these copies is then forwarded to the Department of Highways and Public Transportation, which uses it as a basis for issuing the provisional license. There is no other paper communication between the ASAP and the Department of Highways and Public Transportation unless the defendant fails to complete the ASAP program. If such a notification is received by the Department of Highways and Public Transportation, it revokes the provisional license. There are no second chances or hearings given after a revocation of the provisional license.

The four ASAP school sessions over a four-week period are each two and one-half hours long. The structure of the course is essentially a group discussion on the effects of alcohol on the body and driving. The size of the groups ranges from six to fourteen people. Since the provisional license law does not allow for requiring treatment beyond the ASAP school, little or no effort is given to diagnosing DUI first offenders for further treatment referrals.

Multiple Offenders

Multiple offenders are arraigned in circuit court after a warrant is obtained by the arresting police officer from a magistrate's court judge. A preliminary hearing is available to the multiple offender but is rarely requested.

Most multiple offenders plead guilty either at the time of arraignment in circuit court or before trial. A spokesman for the solicitor estimates that ninety percent of the DUI multiple offenders plead guilty. The other ten percent go to trial, with a conviction rate at trial of eighty-five percent. Interestingly, there is no formal plea bargaining available for DUI multiple offenders. The only hope that an accused DUI multiple offender has of avoiding a conviction for DUI is either acquittal at trial or dismissal of the case before arraignment. Both of these instances are very rare. While a pretrial DUI diversion program has been discussed, it is not presently being used in Greenville. It is not likely that such a program will be instituted in the near future.

After a plea or conviction, a DUI multiple offender may or may not get into treatment, and the process used to get him there varies, depending on the particular judge hearing the case. Four judges regularly hear DUI cases in the Greenville County Circuit Court. All of these judges routinely refer their cases to ASAP after conviction. Three of the judges make ASAP a condition of a suspended sentence, usually a specific jail term. In these instances, the defendant initially reports to the probation department, where his payment of fines and attendance at ASAP are monitored, even though he is not "officially" on probation. After an initial appearance at the probation department, the defendant is then referred to the ASAP program. The other judge routinely places his multiple-offense DUIs on probation, usually for two years, with a condition that they participate in ASAP. In these cases the probation department takes a more active role in supervision. It performs the interview, requires that the defendant make a monthly report, and supervises the payment of fines and participation in ASAP.

Several other judges sometimes hear DUI cases in Greenville Circuit Court. Most of them do not routinely require DUIs to seek treatment or education, but the number of these cases is relatively low. It is estimated that seventy-five to eighty percent of all multiple-offender DUIs are referred to the ASAP program.

When a DUI multiple offender is referred to the ASAP, whether as a condition of probation or suspended sentence, the procedure is the same. The defendant is given an intake interview at which a preliminary diagnosis of his drinking is made. If the preliminary diagnosis indicates that the defendant might have a drinking problem, he is enrolled in the ASAP Structured Group, consisting of eight sessions that are two and one-half hours long. The content of this program is designed for understanding what constitutes a drinking problem and providing motivation to seek further treatment.

Clients diagnosed during the course of the program as problem drinkers are given an interview after completion of the class, at which time a treatment plan is provided. According to a spokesman

for the ASAP, however, there is little they or the probation department can do to enforce any treatment beyond the ASAP program. All of the judges enforce only a referral to the ASAP program, and feel that a defendant has satisfied his requirement if he completes the ASAP program.

Upon completion of the ASAP program, defendants who were attending as a condition of suspended sentence have their files closed at the probation department after payment of the fines. Defendants on probation continue to be supervised after payment of the fine and completion of the ASAP program for the duration of the period of probation.

If a defendant drops out of the ASAP program, several discretionary actions can be taken. The director of the ASAP contacts the defendant to encourage him to return. If this is to no avail he contacts the probation officer, who at his discretion contacts the defendant. If this is not successful, he requests a bench warrant. When the defendant appears on the bench warrant, the judge decides whether to reinstate the defendant in the ASAP program or impose a jail term. It is estimated by a spokesman for the probation department that less than twenty percent of all of the DUIs sent to ASAP are required to return to court by a bench warrant.

A relatively small but significant number of multiple offenders are sent to an inpatient alcohol rehabilitation program instead of the ASAP program. This program, called the Bonner-Kidd Home, is essentially for the serious or chronic alcoholic. Referral to this program is usually a last-resort attempt by the judge to get a third- or fourth-offender into treatment after other programs have failed. As a result, the defendant is usually given the choice of going to the Bonner-Kidd Home or jail.

At the time of plea or jail, when it is apparent to the defendant that he will be going to jail, he is interviewed by the director of the Bonner-Kidd Home. If the director thinks that it can be of value, he recommends to the judge that the defendant enter the program. The judge places the defendant on probation and, upon

successful completion of the program, suspends the five-to-seven-year jail sentence. During probation the defendant is supervised by the probation department under procedures similar to those for a DUI on probation while attending the ASAP program.

The Bonner-Kidd Home is a twenty-bed inpatient facility for the treatment of alcoholic males. Its basic treatment approach follows the Alcoholics Anonymous philosophy of its director, a long-time member of AA. The typical treatment program at Bonner-Kidd is for six months to a year, and almost all who enter the program stay until they are released, partly because a considerable jail term awaits them if they leave.

Third- or fourth-offense DUIs who are not required to go to ASAP or the Bonner-Kidd Home are usually sent to jail or prison. If a fourth offender is not accepted by the Bonner-Kidd Home, most of the judges impose a prison term of five to seven years. It is estimated that 150 to 200 fourth offenders are sent to prison each year in South Carolina. Thus, it is very difficult to become a fifth offender in South Carolina.

EVOLUTION OF THE HEALTH/LEGAL PROCESS

The statewide ASAP system in South Carolina, of which Greenville County is but one component, was developed as a result of the federally funded ASAP concept in Richland County, South Carolina.

In 1973, about a year before the federally funded ASAP was to end, the South Carolina Commission on Alcohol and Drug Abuse received about $750,000 to expand the ASAP concept throughout the state. Initially they contracted with the three major population centers within the state, including Greenville, because these were essentially the only areas of the state that had coordinated treatment services. A grant proposal was developed by the Greenville County Commission on Alcohol and Drug Abuse, and this proposal became the basis for the ASAP contract. The ASAP concept was expanded to the less populous counties of the state one or two years later.

Presently, all counties within the state are served by an ASAP program. Funds for the contracts with the counties come from state-appropriated funds for ASAP and from federal funds.

The Greenville ASAP programs have not changed very much since 1973, except for "fine tuning" adjustments. According to a spokesman for the South Carolina Commission on Alcohol and Drug Abuse, the Greenville ASAP program has managed to obtain DUI referrals from the local legal system much more smoothly than the programs in the other two major population areas. He attributes this to the appointment as ASAP director of a person who was well known and respected within the Greenville criminal justice system. Apparently because of the trust the judges, district attorneys, and probation officers have in the ASAP director, the crucial link exists between the courts and the ASAP.

Richland County (Columbia) is also cited as having a good working relationship between the ASAP and the courts. The referral system operates relatively smoothly because through time an agency relationship has been established between the courts and the ASAP. The spokesman for the South Carolina Commission on Alcohol and Drug Abuse feels that such successful relationships take time to develop.

INSIGHTS AND IMPRESSIONS

- An important strategy for developing a statewide ASAP program included identification of local treatment agencies and coordination of these agencies through contracts. The contract process provides a balance between local autonomy and statewide uniformity. South Carolina was fortunate that local treatment providers were coordinated through the County Commissions on Alcohol and Drug Abuse. It was much easier for the South Carolina Commission on Alcohol and Drug Abuse to contract with one local commission rather than deal with all of the local treatment agencies on an individual basis.
- The appointment of the ASAP director in Greenville County appeared to be important to the development of a sound relationship

between the courts and the ASAP program. It was clear from our talks with all of the people within the court system that the key to their willingness to refer people to the ASAP was the respect they had for its director. To the same end, their willingness to refer defendants to the Bonner-Kidd Home was also due to the high regard they felt for its director.

- South Carolina makes a distinction between first and multiple offenders for purposes of requiring treatment or education. First offenders are handled administratively by the provisional license law and have no further contact with the court system after conviction. Multiple offenders are required to seek treatment of education through the more traditional probation or suspended-sentence approach. If a multiple offender is going to get into treatment, it is vital that someone within the court system, usually a judge, recognize this and make the referral. Because of the broad discretionary powers of the personnel within the court system, a referral to treatment is not as automatic as it is within an administrative system where rules and procedures set the requirements.

- The total lack of formal plea bargaining for DUI multiple offenders in Greenville County is interesting. Normally in a jurisdiction with severe mandatory sanctions such as mandatory loss of license with no hardship or restricted license available, it would be expected that plea bargaining would occur. Further, it is surprising, given the fact that plea bargaining does not exist for multiple offenders, that so many DUIs are pleading guilty. It would seem more logical that many DUIs would request jury trials either in the hope that they will be acquitted, or more realistically, to attempt to overcrowd the dockets with trials so that the prosecutor is forced to plea bargain.

APPENDIX B

EXAMPLES OF INTERVIEW GUIDES FOR COLLECTING INFORMATION FOR DESCRIBING A HEALTH/LEGAL SYSTEM

EXAMPLE OF INTERVIEW GUIDE
FOR A POLICE DEPARTMENT

A. ARREST

1. Is a uniform traffic ticket and complaint (UTTC) used for drinking and driving offenses?
2. What procedures are used for:
    a. deciding whether to arrest for drunk driving?
    b. administering BAC test?
    c. other postarrest processing?
3. How long does it take an officer to process a drunk driver during whole arrest process?
4. How many patrol cars are in operation per shift?
    a. Are there any that concentrate solely on drunk drivers?
    b. Are there any that would ignore drunk drivers?
5. How many drunk driving arrests are made per year?
6. How much court time is required per officer per case?
7. What statutes exist authorizing arrest for drunk driving:
    a. state?
    b. local?
8. How well do you think the courts and other agencies are dealing with the drunk driving problem?
9. Problems? Solutions?

B. BLOOD ALCOHOL CONCENTRATION (BAC)

1. Where is the BAC test performed?
2. What kind of test is given?
3. Who administers the test?
4. What qualifications does this person have?
5. How long does BAC test take?
6. When is BAC test given?
    a. How soon after arrest?

b. What is latest time it may be given?

7. What happens if someone refuses a test?
8. Is BAC test given to all persons arrested for drunk driving?
9. Who pays for the test?
10. How much does it cost?
11. How many tests are given each year?
12. What records are kept?
13. Problems? Solutions?

C. POST BOND

1. What is the procedure for posting bond for drunk driving?
2. Under what conditions must bond be posted?
3. When and where is bond posted?
4. What kinds of bond are permitted?
5. How is amount of bond determined?
6. Who is bond posted with?
7. How long does it take to post bond?
8. What records are kept?
9. Problems? Solutions?

D. STATISTICAL DATA

1. Annual Budget?
2. Number of sworn officers?
3. Traffic arrests by type of offense (alcohol related)?
4. BACs of drivers arrested for drunk driving?
5. How much time elapses between arrest and arraignment?

EXAMPLE OF AN INTERVIEW GUIDE
FOR A PROSECUTORIAL AGENCY

A. CHARGING

1. How does the prosecutor determine if evidence justifies charging for drunk driving? Discussion should include:
    a. the procedure for authorizing complaint and warrant,
    b. conditions for authorization,
    c. person(s) performing authorization,
    d. location authorization performed,
    e. purpose of authorization,
    f. stage of the proceedings authorization takes place,
    g. information used in deciding what to authorize,
    h. length of time to perform an authorization, and
    i. number of performed each year.
2. Problems? Solutions?

B. PRETRIAL CONFERENCE AND OTHER ACTIVITY BEFORE TRIAL

1. What is your role in pretrial and plea bargaining?
2. When is plea bargaining used?
3. What is the usual procedure in plea bargaining?
4. Is earned charge reduction used?
5. Is withheld judgment used?
6. Are charges reduced to nonalcohol offenses?
7. Provide following statistics for one year:

Original Charge	Number of Prosecutions on Original Charge	Number Reduced to			Number Not Prosecuted
		A	B	C	

8. What information is used in deciding what to prosecute for?
9. Is an attempt made at pretrial level to diagnose and refer to treatment problem drinkers?

10. How much time is spent for drunk driving cases?
11. Are health/legal people involved at this point? For diagnosis? For referral?
12. Where is plea bargaining usually conducted?
13. How much time elapses between arraignment and plea negotiation?
14. What is your opinion of drunk driving enforcement, adjudication, and treatment?
15. Problems? Solutions?
16. What sanctions are nonnegotiable?
17. How is driving without a license handled?

C. TRIAL

1. What aspects of trial do you see as significant to the court's ability to deal with drinking drivers? How could these be improved?
2. How much time is required for:
    a. jury trial?
    b. nonjury trial?
3. How much time elapses between pretrial and trial?
4. Are there any differences in a drunk driving process as opposed to any other trial?
5. Problems? Solutions?

EXAMPLE OF AN INTERVIEW GUIDE FOR A DEFENSE COUNSEL

A. PRETRIAL AND OTHER ACTIVITIES BEFORE TRIAL

1. When is plea bargaining used?
2. What is the usual procedure in plea bargaining?
3. How much time do you spend on a drunk driving case?
5. What is your opinion of drunk driver enforcement, adjudication, and treatment?
6. How is the case disposition process influenced by the use of counsel by the defendant?

B. TRIAL

1. What aspects of the trial do you see as significant to the court's ability to deal with drinking drivers?
2. How could these aspects be improved?
3. Problems? Solutions?

EXAMPLE OF AN INTERVIEW GUIDE
FOR A JUDGE

A. POST BOND

1. Describe your involvement in bond posting process
2. What kinds of bond are permitted?
3. Under what conditions is personal recognizance granted?
4. How are failures to appear handled?
5. In a given year, how many accused drunk drivers:
   a. post bond?
   b. get personal recognizance?
6. What is the average amount of bond?
7. Problems? Solutions?

B. ARRAIGNMENT

1. What procedure is followed in arraigning an accused drunk driver?
2. Does anybody other than a judge perform the arraignment?
3. Where does arraignment take place?
4. How much time is required for the arraignment?
5. How much time elapses between arrest and arraignment?
6. Is there any attempt made at arraignment to diagnose and refer problem drinkers?
7. Problems? Solutions?

C. PRETRIAL AND OTHER ACTIVITIES BEFORE TRIAL

1. What role do you play in the pretrial process?
2. What is your opinion of drunk driving enforcement, adjudication, and treatment?
3. Problems? Solutions?

D. TRIAL

1. What aspects of the trial do you see as significant to the court's ability to deal with drinking drivers?
2. How could these aspects be improved?

3. How much time is required for:
    a. jury trial?
    b. nonjury trial?
4. How much time elapses between pretrial and trial?
5. Problems? Solutions?

E. CONVICTION/REFERRAL TO PROBATION

1. Does anybody besides you perform this function?
2. Is everybody convicted referred to probation?
3. If not, what happens to those who aren't?
4. What procedure is followed here? Is sentencing date set for future date?
5. Will a defendant be referred to probation immediately after conviction?
6. How many people are referred to probation each year?
7. Do all return for sentencing?
8. If not, what is done with those who fail to appear?
9. Problems? Solutions?

F. SENTENCING

1. Describe the sentencing process?
2. Who is present during sentencing?
3. What sanctions are available to the judge?
4. Are there mandatory sanctions? If so, describe.
5. What information is available to the judge in selecting sanctions and offering probation?
6. When is the decision of which sanction to use made?
7. Are there any sentencing guidelines available to the judge?
8. How much time is required for sentencing?
9. How much time elapses between conviction and sentencing?
10. How many people receive which sentences/probation each year?
11. Problems? Solutions?

G. PROBATION REVIEW

1. Are there any times in the probation process when the probationer is required to return to court for a review?
2. Who performs the review and who has input into it?

3. What decisions are made as a result of the review?
4. How much time does a review require?
5. How much time elapses between sentencing and review?
6. How many offenders are reviewed each year?
7. Problems? Solutions?

H. PROBATION VIOLATION

1. Describe the procedure for dealing with noncompliers.
2. When is the procedure used?
3. When and how is a bench warrant issued and enforced?
4. Are there any devices short of bench warrant to induce compliance?
5. How much of whose time is required to process a bench warrant?
6. How much time is generally required to bring a violator before the judge?
7. How many bench warrants are issued each year?
8. How many violators appear in the bench warrants each year?
9. What is the range of outcomes of an appearance on a bench warrant?
10. What is the frequency of each outcome each year?
11. Problems? Solutions?

EXAMPLE OF AN INTERVIEW GUIDE
FOR A COURT ADMINISTRATOR/CLERK

A. POST BOND

1. In a given year, how many accused drunk drivers:
    a. post bond?
    b. are released on recognizance?

B. ARRAIGNMENT

1. How many people are arraigned each year?
2. How many people plead guilty at arraignment each year?
3. How many people plead not guilty or stand mute at arraignment each year?

C. PRETRIAL AND OTHER ACTIVITY BEFORE TRIAL

1. Provide the following statistics for recent year:

Original Charge	Number Prosecutions on Original Charge	Number Reduced to			Number Not Prosecuted
		A	B	C	

D. TRIAL

1. How many jury and nonjury trials are held each year?
2. How many convictions to offense charged each year:
    a. jury trial?
    b. nonjury trial?
3. How many convictions to lesser offenses each year:
    a. jury trial?
    b. nonjury trial?
4. How many not guilty?
5. How many dismissed?
6. How many appeals?

E. CONVICTION/REFERRAL TO PROBATION

1. How many people are referred to probation each year?

2. How many people return for sentencing each year?

F. SENTENCING

1. How many people receive what sentences/probation each year?

G. PROBATION VIOLATION

1. How many violators are brought before the judge each year?
2. What is the frequency of each outcome each year?

H. COURT BACKGROUND DATA

1. Organization?
2. Types and number of courts hearing drunk driving cases?
3. Number of judicial personnel?
4. Number of parajudicials?
5. Number of court administrators/clerks?
6. Number of prosecutors?
7. Annual expenditures/revenues by agency? How financed?

EXAMPLE OF AN INTERVIEW GUIDE
FOR A PROBATION DEPARTMENT

A. PROBATION INTERVIEW

1. What is the purpose of the interview?
2. Who gives the interview and what are his/her qualifications?
3. When is the interview given?
4. Is an interview given to all those referred to probation? If not, under what conditions would it be given?
5. What information is elicited in the interview?
6. What procedure is followed in the interview?
7. How much time is required for an interview?
8. How much time elapses between conviction/referral to probation and the interview? How many people are referred to probation each year?
9. How many referrals are made to what places each year? What criteria is used for referral?
10. What percentage of people referred to probation never actually report?
11. What percentage of people referred to treatment never actually report?
12. What happens if a person refuses to report to probation or to comply with a recommendation?
13. How is the interview financed?
14. Problems? Solutions?
15. How well do other elements of the health/legal system handle the problem?

B. DIAGNOSTIC INTERVIEW

1. Is there a provision for an interview by another person if the probation interviewer is unable to make a decision?
2. What is the purpose and uses of this interview?
3. When is the interview given?

4. When is the diagnostic interview used?
5. What information is elicited in the interview?
6. What procedure is followed in the interview?
7. How much time is required for the interview?
8. How many referrals are made each year from this interview?
9. How many persons refuse a diagnostic interview?
10. How many persons fail to follow through on referrals made by the diagnostic interview?
11. What happens if a person refuses an interview or does not comply with recommendations?
12. How is the interview financed?
13. Problems? Solutions?

C. SENTENCING

1. What percentage of what kinds of recommendations are accepted by the judge?
2. Reasons for nonacceptance.
3. How many people receive what sentences each year?
4. How many people are placed on probation each year?

D. PROBATION SUPERVISION

1. What are the purposes of probation supervision?
2. How is supervision performed?
3. Who supervises?
4. Under what conditions is probation supervised?
5. How many drunk driving offenders are supervised each year?
6. How much time is typically required to supervise an offender?
7. How many offenders are handled by one supervisor each year?
8. What is the ytpical case load for a supervisor:
   Problem drinkers?
   Social drinkers?
9. How many offenders complete probation each year?
10. Problems? Solutions?

E. PROBATION REVIEW

1. Are there instances in which a defendant returns to court for review before termination of probation? If so, what is your

role in the review?

2. What is its purpose?
3. How and when is it accomplished?
4. Under what conditions will review be set?
5. What decisions are made as a result of the review?
6. What use is made of the results of the review?
7. How much time does a review require?
8. How much time elapses between sentencing and review?
9. How many offenders are reviewed each year?
10. Problems? Solutions?

F. PROBATION TERMINATION

1. Describe termination procedures?
2. Under what conditions is probation terminated?
3. Who decides that probation should or should not be terminated?
4. Who participates in the termination process?
5. What happens if a person is not terminated?
6. How much time is typically required to terminate a defendant?
7. How many defendants are terminated each year?
8. Problems? Solutions?

G. PROBATION VIOLATION

1. What is your role in handling probation violations?
2. When are your procedures followed?
3. What participation do you have in the issuance of the bench warrant?
4. How much of your time is involved in the bench warrant process?
5. How much time does it typically take to bring a violator before the judge?
6. How much time elapses between alleged noncompliance and issuance of the bench warrant?
7. How many bench warrants are issued each year?
8. What other methods are used to deal with the noncomplier short of a bench warrant?
9. How many violators are brought before the judge each year?

a. through bench warrant?

b. through other devices?

10. What is the range of outcomes of an appearance?

11. What is the frequency of each outcome each year?

12. Problems? Solutions?

H. PROBATION BACKGROUND DATA

1. Number of probation officers?

2. Organization?

3. Annual budget?

4. How financed?

5. Number of cases per officer per year?

6. Number of drunk driving cases per officer per year?

7. Drunk driving case load per probation officer?

EXAMPLE OF AN INTERVIEW GUIDE
FOR DESCRIBING SYSTEM EVOLUTION

A. DESCRIPTION OF CHANGE
   1. What new procedures have been introduced recently?

B. FACTORS INFLUENCING CHANGE
   1. Describe the reasons for wanting to make changes.
   2. Was there any single event that started the need for change?
   3. Describe the local community in terms of its amenability to change.
   4. Were there any laws or customs inhibiting change?

C. PERSONS INFLUENCING CHANGE
   -- What persons or groups were instrumental in identifying needed changed?
   -- What people or groups were instrumental in adopting changes?
   -- What were their reasons for wanting change?
   -- What poeple or groups needed to be persuaded to accept change?
   -- List those persons favoring and those opposing specific change.
   -- List the reasons for favoring or rejecting change.

D. IMPLEMENTATION OF CHANGE
   -- What specific strategies were employed to get the changes adopted?
   -- Which of these strategies worked?
   -- Which people utilized which strategies?
   -- What actions were taken to block change?
   -- Were these actions overcome, and if so, how?
   -- What was the starting point for implementation of change?

APPENDIX C

LIST OF SINGLE STATE AUTHORITIES FOR ALCOHOL PROGRAMS

Alabama	Alcoholism and Drug Abuse Division Department of Mental Health Retirement Systems Bldg. 135 S. Union Street Montgomery, Alabama 36130 (205) 265-2301
Alaska	Office of Alcoholism and Drug Abuse Department of Health and Social Services Anderson Wilson Bldg. 270 Ferry Way Juneau, Alaska 99811
Arizona	Behavioral Health Sciences Division Department of Health Services Arizona State Hospital 2500 VanBuren Street Phoenix, Arizona 85008 (602) 255-1230
Arkansas	Office of Alcohol and Drug Abuse Prevention 1515 W. 7th Street, Suite 300 Little Rock, Arkansas 72202 (501) 371-2603
California	Department of Alcohol and Drug Abuse 825 15th Street Sacramento, California 95814 (916) 445-1940
Connecticut	Alcohol and Drug Abuse Council Department of Health Hartford, Connecticut 06115 (203) 566-3465
Delaware	Bureau of Substance Abuse Mental Health Division Department of Health and Social Services 1901 N. DuPont Highway New Castle, Delaware 19720 (302) 421-6101
Florida	Alcoholic Rehabilitation Program Mental Health Program Office Department of Health and Rehabilitation Services

	1317 Winewood Blvd. Talahassee, Florida 32301 (904) 487-2820
Georgia	Alcohol and Drug Services Section Division of Mental Health Department of Human Resources 618 Ponce deLeon Avenue, N.E. Atlanta, Georgia 30308 (404) 894-4785
Hawaii	Alcohol and Drug Abuse Branch Division of Mental Health Department of Health 1270 Queen Emma Street Honolulu, Hawaii 96813 (808) 548-7655
Idaho	Bureau of Substance Abuse Department of Health and Welfare 700 West State Boise, Idaho 83720 (208) 384-7706
Illinois	Division of Alcoholism Department of Mental Health and Developmental Disabilities 1900 Randolph Towers 188 W. Randolph Street Chicago, Illinois 60601 (312) 793-2907
Indiana	Department of Addiction Services State Department of Mental Health 5 Indiana Square Indianapolis, Indiana 46204 (317) 633-4477
Iowa	Department of Substance Abuse Liberty Bldg., Suite 230 418 6th Avenue Des Moines, Iowa (515) 281-3641
Kansas	Alcohol and Drug Abuse Section State Office Bldg. 10th and Topeka Avenue Topeka, Kansas 66612 (913) 296-3925

Kentucky	Division for Mental Health and Mental Retardation Services Bureau for Health Services Department for Human Resources Health Bldg. 275 E. Main Street Frankfort, Kentucky 40601 (502) 564-7610
Louisiana	Burear of Substance Abuse Office of Hospitals Department of Health and Human Resources 200 Lafayette Street Baton Rouge, Louisiana 70801 (504) 342-6685
Maine	Office of Alcoholism and Drug Abuse Prevention Bureau of Rehabilitation Department of Human Resources 32 Winthrop Street Augusta, Maine 04330 (207) 289-2781
Maryland	Alcoholism Control Administration Department of Health and Mental Hygiene 201 W. Preston Street Baltimore, Maryland 21201 (301) 383-6151
Massachusetts	Division of Alcoholism Department of Public Health 755 Boylston Street Boston, Massachusetts 02116 (617) 727-1960
Michigan	Office of Substance Abuse Services Department of Public Health Baker-Olin North Bldg. 3500 N. Logan Street P.O. Box 30035 Lansing, Michigan 48909 (517) 373-6307
Minnesota	Chemical Dependency Program Division Bureau of Mental Health Department of Public Welfare Centennial Office Bldg. 658 Cedar Street St. Paul, Minnesota 55155

(612) 296-8573

Mississippi

Division of Alcohol and Drug Abuse
Department of Mental Health
619 Robert E. Lee Bldg.
Jackson, Mississippi 39201
(601) 354-7031

Missouri

Division of Alcoholism and Drug Abuse
Department of Mental Health
2002 Missouri Blvd.
P.O. Box 687
Jefferson City, Missouri 65101
(314) 751-4146

Montana

Alcohol and Drug Abuse Division
Department of Institutions
1539 11th Avenue
Helena, Montana 59601
(406) 449-2827

Nebraska

Division on Alcoholism
Department of Public Institutions
Lincoln Regional Center Campus
W. VanDorn and Folsom Streets
P.O. Box 94728
Lincoln, Nebraska 68509
(402) 471-2851

Nevada

Bureau of Alcohol and Drug Abuse
Department of Human Resources
Kinkead Bldg.
500 King Street
Carson City, Nevada 89701
(702) 885-4790

New Hampshire

Program on Alcohol and Drug Abuse
Division of Public Health Services
Department of Health and Welfare
66 South Street
Concord, New Hampshire 03301
(603) 271-3531

New Jersey

Commission for Alcohol, Narcotic, and Drug Abuse
Department of Health
129 E. Hanover Street
Trenton, New Jersey 08608
(609) 292-5760

New Mexico	Substance Abuse Bureau Behavioral Health Services Division Health and Environment Department Crown State Office Bldg. 725 St. Michaels Drive Santa Fe, New Mexico 87503 (505) 827-5271
New York	Division of Alcoholism and Alcohol Abuse Office of Alcoholsim and Substance Abuse 44 Holland Avenue Albany, New York 12229 (518) 474-5417
North Carolina	Alcohol and Drug Abuse Division Department of Human Resources Albemarle Bldg. 325 N. Salisbury Street Raleigh, North Carolina 27611 (919) 733-6650
North Dakota	Division of Alcoholism and Drug Abuse Department of Health 909 Basin Avenue Bismarck, North Dakota 58505 (701) 224-2767
Ohio	Division of Alcoholism Department of Health 246 N. High Street Columbus, Ohio 43215 (614) 466-3445
Oklahoma	Alcohol Division Department of Mental Health 408-A N. Walnut Street P.O. Box 53277 Oklahoma City, Oklahoma 73105 (405) 521-2811
Oregon	Programs for Alcohol and Drugs Mental Health Division Department of Human Resources 2575 Bittern Drive Salem, Oregon 97303 (503) 378-2163
Pennsylvania	Governor's Council on Alcohol and Drug Abuse 2101 N. Front Street

	Harrisburg, Pennsylvania 17120 (717) 787-9857
Rhode Island	Division of Substance Abuse Department of Mental Health, Retardation, and Hospitals Bldg. 303, General Hospital Rhode Island Medical Center Cranston, Rhode Island 02920 (401) 464-2091
South Carolina	Commission on Alcohol and Drug Abuse 3700 Forest Drive Columbia, South Carolina 29204 (803) 758-2521
Tennessee	Alcohol and Drug Abuse Section Department of Mental Health and Mental Retardation 501 Union Street Nashville, Tennessee 37219 (615) 741-1921
Texas	Texas Commission on Alcoholism 809 Sam Houston State Office Bldg. 201 E. 14th Street Austin, Texas 78701 (512) 475-2577
Utah	Division of Alcoholsim and Drugs Department of Social Services 150 W. North Temple Street, Room 350 P.O. Box 2500 Salt Lake City, Utah 84103 (801) 533-6532
Vermont	Alcohol and Drug Abuse Division Department of Social and Rehabilitation Services Osgood Bldg., Waterbury Office Complex Waterbury, Vermont 05676 (802) 244-5181
Virginia	Substance Abuse Division Department of Mental Health and Mental Retardation James Madison Bldg., 13th Floor 109 Governor Street Richmond, Virginia 23219 (804) 786-5213

Washington	Office of Alcoholism Bureau of Social Services Department of Social and Health Services Office Bldg. 2 Mail Stop OB-44W Olympia, Washington 98504 (206) 753-5866
West Virginia	Alcohol and Drug Abuse Mental Health Services Section Department of Health 535 State Office Bldg. 2 1800 Washington, Street, East Charleston, West Virginia 25305 (304) 348-3616
Wyoming	Alcohol Abuse Programs Mental Health and Mental Retardation Services Division of Health and Medical Services Department of Health and Social Services Hathaway Bldg. 2300 Capitol Avenue Cheyenne, Wyoming 82002 (307) 777-7115
District of Columbia	Bureau of Alcoholic Treatment and Prevention Mental Health Administration Department of Human Resources 821 Universal Bldg. N 1875 Connecticut Avenue, N.W. Washington, D.C. 20009 (202) 673-6692

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