

APPENDIX - SUMMARY OF TELEPHONE DISCUSSIONS

This appendix contains descriptions of DWI enforcement procedures for eleven jurisdictions based on telephone discussions with police officers and prosecutors. The information captured was used in conjunction with other information to formulate the baseline system described in the report.

We ask readers to note that laws in some states have changed since the discussions. Also, the acronyms “DWI” and “DUI” are used throughout this appendix, depending on which term was in use at each site. Readers should also note that the information presented here reflects the opinions and attitudes of those who were contacted, often expressed in their own words. We have made no attempt to obtain any confirmation from other sources or from separate studies.

The large amount of paperwork and processing time required for DWI arrests remain the biggest problem for police officers contacted. Officers almost everywhere complained of the complicated process and the need for documentation of minute details of each case. This level of detail is apparently necessary in many locations to “cover all of the bases” should the officer be required to testify at an administrative or court hearing.

Some areas have planned DWI enforcement with both police and states attorneys present so that procedures hold up in court. We also heard about streamlining the arrest process by releasing suspects directly from a checkpoint site, rather than transporting suspects to jail or police headquarters for processing; this is done under stringent guidelines approved by the courts. Also, at one site, when a case is dropped, officers are notified and memos are written to administration to point out what has happened and the reasons.

Specially trained anti-DWI enforcement officers have resulted in increased arrest rates in some areas. Because general patrol officers can call for specially trained officers to handle arrests and processing of DWI suspects, they are willing to apprehend more DWI suspects. Also, the specialized officers will testify if necessary which, reportedly, can be an intimidating process for officers unfamiliar with the often complicated DWI adjudication process. A less experienced officer who has spent hours on the witness stand “on a simple DWI case who is being questioned by a good defense attorney is afraid; they don’t want to go through that experience again.” If the suspect is a multiple offender, or has a good attorney, the attorney will badger the officer to the point where “you are looking at your whole credibility going out the window, and you’re trying to fight just to tell them what you saw.”

Most times policies and procedures are in place for officers to follow when handling DWI suspects, but officers have told us they do not always follow procedures. Specialized anti-DWI enforcement officers often recommend additional training for all officers to aid in the detection and processing of DWI suspects and to stress proper procedures. In several instances we heard about police officers who do not want to handle suspects; “they’d just as soon if they see one they think is drunk,

turn ...to get away from it...if we had every officer who was on the ball looking and would follow his instincts on DUIs, we'd probably have twice as many DUI arrests." Another officer would like to see nationwide certified training in DWI detection and arrest procedures. He discussed how training at Northwestern University Traffic Institute is highly recognized in courts and thinks if anti-DWI training can be raised to the same level, it would cut down on court time and save money spent on cases. "Block training" programs were discussed in several locations as a solution to scarce funds for training. Officers are sent to formal training programs and then return and train other officers in the department who did not attend.

Administrative hearings are problematic in several areas because defense attorneys use these hearings as a source for finding out details about the case which help them decide the most beneficial way to handle the case in judicial proceedings. These hearings often do not focus on their intended purpose, which is whether the driver license suspension will stand or fall, but instead have become "free depositions" requiring substantial amounts of the officers' time. And there are no prosecutors present to advise the officers.

Several prosecutors we talked with were overwhelmed with DWI cases (1,200-1,300 per year) on top of other types of cases. The most recent trend has been to add more police officers, but not more judges, court rooms, prosecutors or public defenders. "You just can't tinker with one aspect of the system. You just can't add cops and think problems will get better; they will get worse. Then, there are more cases which get lost..." Prosecutors believe that there needs to be more and better communication between the law enforcement administrators and the district attorney's and prosecutor's offices as to what is enforced and how. Otherwise, "a bunch of cases come in which are questionable in that they might not follow state statute, which means it might not be possible to prosecute successfully, resulting in lost or dismissed cases" which angers the cops and possibly the public. Or it sends a message that someone can get away with that particular offense. At these sites, it is also difficult if not impossible to find the time to properly prepare for a case.

And, finally, there are sites where a significant number of individuals arrested for DWI disappear and their cases are not resolved. This is a problem which needs to be addressed.

Following are the highlights of the discussions, separated by site.

SALINAS, CALIFORNIA

Department Size. 142 officers at time of contact, authorized for 151 officers.

State Laws. BAC limits are 0.08 for adults, 0.05 for juveniles under 21. There is a zero tolerance law for juveniles under 21 which reads if any alcohol is detected in a juvenile's system (even 0.01), administrative action will be taken; the juvenile stands to lose his or her license for one year. But the BAC level must be 0.05 or greater for a charge of DUI.

Training. All Salinas police officers are trained in DUI detection cues. In California, police academy training currently includes operation of the BAT, and most Salinas police officers are certified by the State of California, Department of Justice as BAT operators.

Enforcement and Apprehension. Special Operations handles specific DUI enforcement using moving surveillance; only stationary when conducting checkpoints. They do not target establishments (e.g., sit outside of bars in parking lots).

A state Office of Safety grant funds saturation patrols and periodic checkpoints. Once a month a DUI checkpoint is conducted at a location within the city chosen at random, generally from about 8:00 p.m. to midnight. Afterwards, officers staffing the checkpoints are on saturation patrols until 3:00 a.m. The dates of the checkpoints are publicized, but not the locations. The other weekends, saturation patrols (three marked police cars, 2 officers per car) drive randomly throughout the city with no specified boundaries. General patrol officers also watch for DUI suspects. At crash scenes, officers always check for possible alcohol involvement.

A typical DUI investigation begins when officers first detect either driving that is erratic or involves an infraction of the vehicle code. Officers often use basic vehicle code infractions as the cause for the stop.

Formal policy allows for pursuit only with serious crimes (includes DUI). The pursuing officer must have reason to begin a pursuit, must be aware of existing street conditions (e.g., persons, vehicles, weather, time of day), and the nature of the crime. All of this information is recorded when a pursuit begins and is monitored by a Field Supervisor, a Sergeant, and the Watch Commander. The pursuit can be terminated by any of these individuals (or by the officer who began the pursuit) if anyone determines risks are too great.

There are no computers in the patrol cars. Having just received a video camera, there are plans to record driving history, the stop, field sobriety tests, and any subsequent

arrests. While following a DUI suspect, officers radio in pertinent information before making a stop.

Field Investigation. After the stop, the officer approaches the vehicle and requests information on the driver's license and vehicle registration which puts the officer in close enough contact to make a determination about the presence of alcohol. When a stop is suspected of being DUI related, the officer radios for a second unit. After the second unit arrives, the driver is asked to step out of the car and proceed to a safe area. The second officer is there as a safety factor to assist the first officer in case the person becomes belligerent, or passengers or others try to get involved. A series of questions are asked which may enforce the officer's suspicions that the driver has been drinking. If so, the driver is informed that the officer believes alcohol has been consumed and that the driver is responsible for taking a series of field sobriety tests (FSTs). The second officer witnesses the FSTs.

The FSTs are standardized and appear on a preprinted form which is followed from the time the officer begins to administer the tests through either an arrest or the person is released. The same tests are administered in the same order to every person suspected of DUI. The person's capabilities in performing the tests determine if the DUI investigation needs to continue. If the individual performs poorly on the FSTs, then the PAS (passive alcohol sensors) testers or the flashlight sniffers may be used to confirm the presence of alcohol in the breath (but the testers may not be used before the FSTs have been completed).

Arrest and Transport Violator. The suspect is arrested at the scene, handcuffed, and driven by the arresting officer back to the station. Use of a "paddy wagon" can be arranged for checkpoints. The backup officer will begin "tow procedures." In California, if you are driving a vehicle and are arrested from that vehicle, the vehicle may be towed and stored. This is a safeguard to the arrestee that the car not remain out on the street. The arrestee may be allowed to leave the vehicle legally parked if the arrestee signs a form releasing the police from any responsibility for the vehicle; this reportedly does not happen often.

Post Arrest Investigation and Processing. At the station, the arrestee is photographed, finger printed and allowed to choose which test to take (blood, breath or urine). There is a cite-and-release policy; if the person is cooperative and has no other basis for arrest (no outstanding warrants or other charges to be filed), and there is a responsible adult (family member or friend who is sober and can take charge of the person), then they will cite the individual out with an appearance date, meaning the individual does not initially spend any time in jail. In this case, the time before the initial arraignment date in court is typically 10-14 days from the arrest and is printed on the back of the form. If a responsible adult cannot be located, the DUI suspect is taken to county jail. In this case, the person has a right to arraignment

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within so many hours of arrest, generally within 2 days of the arrest date. If the person bails out, that date will be further in the future. At the initial arraignment the charges are read and the person either accepts the charges and pleads guilty or pleads not guilty and appropriate court appearances and dates are assigned accordingly.

Arrest and Processing Time. For a typical DUI case, an officer usually spends two hours arresting and processing the DUI suspect. In addition to the primary DUI form, which lists field sobriety tests, etc., the other forms which might need to be completed include evidence forms, tow paperwork, arrest charges in addition to the DUI charge, and an arrest report.

Prosecution Support. Not a lot of people request administrative hearings, so officers do not spend a great deal of time at hearings. Each hearing requires under an hour of an officer's time. For the few DUI cases which proceed to trial, officers spend approximately one hour per trial preparing the case with prosecutors. At trial, the officers testify why the initial stop was made (easy because any infraction is cause for a stop), that the person on trial was driving that vehicle on that date, the reason to suspect alcohol was involved (e.g., the officer detected an odor of alcohol) which led to the FSTs which the person failed, leading to the BAC test.

Handling Juvenile Cases. If a juvenile is arrested at a checkpoint, officers will spend a "great amount of time" attempting to locate a responsible adult. If one cannot be found, the juvenile will be housed at juvenile hall. If a juvenile has been found driving with a BAC of 0.01 or 0.02 then administratively, under the zero tolerance law, they begin the process of the license suspension. The paperwork goes into the Department of Motor Vehicles who notifies the juvenile of the pending action and asks if the juvenile is going to contest the action. If the juvenile does nothing within a certain period of time, the license is suspended. If the juvenile requests a hearing, the officer must go and testify.

Comments. None.

SAN GABRIEL, CALIFORNIA

Department Size. 59 officers at time of contact.

State Laws. BAC limits are 0.08 for adults, 0.05 for juveniles under 21. There is a zero tolerance law for juveniles under 21 which reads if any alcohol is detected in a juvenile's system (even 0.01), administrative action will be taken; the juvenile stands to lose his or her license for one year. But the BAC level must be 0.05 or greater for a charge of DUI.

Training. There is no formal departmental policy which outlines DUI training for the officers. There are very general policies. All officers have attended classes on DUI detection and had in service training. The officers have between 8-30 years of police experience.

The four officers in the traffic division have attended classes on recognizing signs of substance abuse; one officer is a certified drug recognition expert (DRE). The traffic division officers would look to see if the pupils are pinpointed revealing possible opium use, or completely dilated revealing possible marijuana or other drug use. The DRE expert does a little more thorough examination. Reportedly when the drug tests come back, the DRE expert is usually right on the diagnosis or very close, especially in the usage of combinations of drugs and/or alcohol.

Enforcement and Apprehension.. The California Office of Traffic Safety (OTS) provided funding in 1994-1995 and in fact those funds were used to start the traffic program. The funding required the traffic division to conduct monthly checkpoints. Prior to the funding there had been no motorcycle officers in over 22 years and no traffic unit, only one traffic investigator. That OTS funding has ended but they continue to hold the checkpoints or have DUI roving teams.

The traffic division specializes in DUI enforcement, although general patrol officers are on the lookout for drunk drivers also. Traffic officers handle 90% of crash investigations within the city, any special events, and anti-DUI education in the schools. They typically use moving teams of two motorcycle officers who patrol looking for drunk drivers. There are PAS devices on the bikes. If a patrol unit is available, it will follow the bikes to transport individuals. The officers work from experience and often patrol the back (side) streets as they find drunk drivers try to avoid detection on the main streets. Officers look for weaving, stopping at green lights, failure to proceed when the light turns green, slow and deliberate movements of lane changes, or abrupt lane changes, basically inconsistent driving patterns; they watch for more than one cue, a more constant pattern to show the driver may be under the influence. At a crash scene, officers look for signs such as alcohol on the breath, blood shot and watery eyes in persons interviewed at the scene. They also

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look for containers and statements from other parties or witnesses. The roving patrols work best for actually catching DUI suspects, but checkpoints work best for informing the public.

The traffic division holds DUI checkpoints (about one a month) but the checkpoints sometimes changed to DUI teams (discussed above) because of lack of personnel. Four to seven officers set up the checkpoints, depending on available officers. Motorists are warned of the checkpoint with signs in advance, but are not given an outlet to bypass the checkpoint. When enough officers are available, chase vehicles are used to stop motorists who turn around to avoid the checkpoint. Every vehicle is stopped unless there is a long backup or busses trying to get through, in which case, the officers would open up the road and allow the backup to pass, and then would begin stopping all vehicles again. The vehicles are stopped five at a time and each driver is approached, greeted and given information on drunk driving. Individuals are advised of other minor violations such as non-use of seatbelts, but citations are not issued for these other minor violations. Drivers are cited for major violations. Each driver is asked if he or she has a driver's license, but are not asked to show it unless there are signs the driver has been drinking.

On occasion, the police receive calls from the public reporting suspected drunk drivers and have sometimes been able to send units directly to intercept the individuals.

There is a pursuit policy that is not specific to DUI cases. Officers do everything necessary to terminate the pursuit by stopping the suspect, but will call off the pursuit for any unsafe conditions (traffic, weather). Officers or on-duty Watch Commanders may terminate a pursuit. Reportedly, drunk drivers sometimes will not stop but will continue at the same rate of speed (not at an increased speed) and in those cases, typically, another unit will get in front of the suspected drunk driver and slow to a stop in an attempt to stop the suspect. Officers often must improvise because the impaired or drunk drivers are not acting or reacting normally.

Field Investigation. Once the vehicle is stopped, the officer will approach the vehicle and ask the driver for a license, usually getting close enough to see what the individual is doing and to smell any odor of alcohol. The officer will be looking for how the individual retrieves the license (fumbling, passes over it several times while looking for it, cannot find it when the officer sees it) and listening for slurred or incoherent speech. If signs of impairment are evident, the individual will be asked to get out of the vehicle and the officer will note if the individual trips or has trouble exiting the vehicle. The officer will typically be making mental notes at that point as to the individual's gait and if the vehicle was used as a crutch to steady the individual while walking. Normally, a backup unit will have arrived at this point because the first officer would have reported following a possible drunk driver and making the stop, and a backup unit would have been dispatched. The person will be

asked a series of questions before being asked to perform field sobriety tests. These questions include topics such as if the individual is under medical care, taking any medications, have any leg, back or hip problems (or feet, ankles, knees) to determine if the field sobriety tests need to be altered to accommodate the person. Occasionally the officers will encounter a disabled person and suitable tests must be given which are fair and impartial to the individual.

Based on the situation, the officers will determine which field sobriety tests to administer. There is no policy, but it is routine for one officer to be in front of the suspect giving instructions and one officer will be behind the suspect in case the individual would fall. Generally the suspect will be asked to perform at least three physical field sobriety tests as well as gaze nystagmus. Reportedly narcotics are often involved as well as, or instead of alcohol (the officer contacted estimated as many as one-third of DUI arrests involve alcohol plus another substance, often marijuana). The officers have PAS devices available and can call the DRE, if that expert is available. The arresting officer uses every tool available, but if the DRE is not available, and the person is clearly impaired although BAC levels may be low, the person is still arrested.

Arrest and Transport Violator. Persons suspected of DUI are placed under arrest at the scene and given a choice of blood, breath or urine tests and then are transported to take the chosen test. If drugs are suspected, the options are blood or urine. The tests are mandated by state law. Test results or refusal forms are added to the reports. The officer contacted estimates 3 out of 10 individuals refuse the breath test. Sometimes, they choose the test, but when they get to the station, they will try to cheat the test or refuse at that point.

Post Arrest Investigation and Processing. Individuals are booked at the central station which has a jail facility. Processing individuals arrested for DUI does not vary by enforcement method except for when checkpoints are used, where the officers generally do not have a driving pattern for the case. If there are no warrants outstanding for an individual, and the person has sobered up (minimum of five hours), he or she is cited out. Generally if the person was stopped on a major street, the vehicle is impounded. Individuals are not Miranda-ized unless a crime has been committed (would be for drugs, not for alcohol).

Sometimes, if field conditions are not safe, field sobriety tests can be done at the station. Also, if lighting conditions in the field are poor, the other eye tests may be conducted at the station as well, especially for drug involvement where the eyes are studied for indications. Following a crash, everyone at the scene is interviewed. In the case of a regular DUI stop, passengers are sometimes asked questions if the driver is too drunk to remember or is uncooperative.

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Arrest and Processing Time. There is a lot of paperwork for officers to process DUI arrestees. It typically takes an officer two hours from the time of the stop until the officer is back out on the street, and then the report may not necessarily be written. Paperwork consists of an Intoximeter form (if the person took the breath test), booking information (if a booking officer is not available), possibly an administrative per se form and a temporary license must be filled out for the individual, and the officer's report. If an individual stays in custody, he or she must be arraigned within 48 hours; otherwise, if released on a citation, court dates are set for 30 days after the arrest.

Prosecution Support. Most DUI offenders will plead guilty or plead out to reckless driving if it is a first offense; a small number of cases actually go to trial. The cases which do go to court are usually individuals with prior DUI offenses who are facing more serious jail time. For cases which proceed to court, officers will review their reports to refresh their memory of the case and will usually meet with the district attorney beforehand to prepare a game plan for what might happen in court.

Major issues involving police officers at trial include probable cause, and the defense sometimes tries to suppress evidence saying their clients did not understand their rights. Because both the defense attorneys and prosecutors must disclose what evidence they have, the prosecutor knows ahead of time what areas are going to be covered more thoroughly and can go over those areas with the officers. The arresting officer usually must testify, but it is not just limited to that officer if, for example, other officers were on the scene or got involved somehow. For preliminary hearings, sometimes the officer is just placed on call, but does not have to appear if the offender is going to plead guilty or plead out. The majority of time for trials, the officer does not take the stand, but the defense waits to see if all the pieces are in place (the officer shows up, the paperwork is in order, etc.) before pleading guilty.

After the arraignment where the charges against the individual and the status (bailed out, cited out, etc.) are given, the preliminary hearing is set. The preliminary hearing was described as a "mini trial" to see if there is enough evidence to go to trial or enough that the person pleads guilty without going to trial.

Officers must testify if they are called to an administrative hearing which is done through the driver licensing agency. Reportedly, officers are rarely called to administrative hearings (the officer contacted had only appeared at two hearings). If an adult has a BAC of 0.08 or greater, the license is immediately seized and the person is given a temporary license which is good for 30 days. Within that 30 days the person must appear before the DMV to contest the seizure and plead the case to retrieve his or her license. The officers are not always subpoenaed into the DMV hearing, but sometimes they are and then must appear. The hearings are informal, requiring approximately 30 minutes of an officer's time. The officers will typically testify why the stop occurred, what the alcohol content in the person's blood was,

what the person did, or anything that might come up in a trial. When the officer is finished answering questions, he or she leaves and typically does not know if the suspension is upheld or if the license is given back. The individual charged may not find out immediately either.

Handling Juvenile Cases. Reportedly there are few juvenile DUI offenders in San Gabriel. Juveniles are given a PAS test, a form is filled out, the citation issued and the license is suspended for one year. The juvenile is then released to a parent or responsible party. If the juvenile is arrested for DUI, he or she is booked, the parents are notified and then the juvenile is released.

Comments. The San Gabriel Police Department conducted a study of the ethnic breakdown of DUI offenders. There is mix of Asian, Hispanic, and Caucasian populations in the area, and DUI offenders are reportedly represented equally among these three groups.

SARASOTA, FLORIDA

Department Size. 188 officers at time of contact.

State Laws. BAC limits are 0.08 in Florida. There is an 0.02 law for persons under the age of 21. If someone under 21 is stopped for any reason, and the officer smells alcohol on the person's breath, the officer does not need probable cause for DUI at that point to request a breath test. If the person does not give a breath test, he/she will be given a citation and will lose his/her license for a period of one year. If the person takes the test and blows a 0.02-0.08, the result is loss of license for six months.

Training. All Sarasota officers are trained initially at the police academy on detection cues and on how to perform field sobriety tests. The officers in the traffic unit have also been through a 40 hour course (IPTM in Jacksonville) which teaches detection of DUIs and new, improved field sobriety detection techniques. Also, all new Sarasota police officers must spend 3 days training with the traffic unit officers, who are certified trainers. The training officers go over the traffic laws and procedures.

Enforcement and Apprehension. Sarasota uses routine patrols, checkpoints, and DUI task force patrols which are actually traffic patrols looking for violations and DUIs; these patrols do not have to answer routine calls for service. Three to four checkpoints a year, which are conducted around holidays, are heavily publicized to inform the public the police are watching for DUIs. The publicity is the intent, rather than actually arresting large numbers of DUI offenders.

The patrol division using marked police cars make the majority of DUI arrests. Officers in the traffic division normally handle the "DUI directed patrols." There is one officer per vehicle. They drive unmarked cars because of their normal traffic functions during the day to catch speeders, but this reportedly is not an advantage in apprehending DUI suspects, because the average DUI offender does not realize if "you have blue lights on the top or not." Many times officers are forced to use a siren to get the attention of a DUI suspect.

Moving surveillance is usually conducted because following a DUI suspect gives an officer time to build a case by observing detection cues ("straddling the center lane, weaving within a lane is a good indicator, hugging the left or right side of the lane as if using the lane marker to judge where they are going," invariably crossing the lane marker at some points). Reportedly, younger, more inexperienced drivers will go faster and drive more recklessly (e.g., squealing tires going around a corner or rolling through a stop sign) and older persons will be slower and more deliberate in their actions ("they know they have to go home and are going to take it easy to make

sure they get there and don't end up in the ditches," possibly driving 5-10 miles under the speed limit).

The traffic officers respond to all serious injury and fatal crashes. When responding to a crash scene, the officers will ask the EMTs or others already at the scene if there were any signs of alcohol involvement. The officers will also interview witnesses or passengers and observe the scene for open containers, etc. Unfortunately, there is usually no driving case, only the results of the driving. There might be an issue of whether the person can even be placed behind the wheel. Once it has been determined alcohol was involved, the driver or witness would be asked if the person was the driver, the only occupant in the vehicle or if there were others, etc., to try and establish that the person was driving the car at the time of the crash. The officer must also determine that the person has not had anything after the crash that added to the blood alcohol level.

The Sarasota Police Department has a policy which generally allows pursuits. The officers must call in the reason for the pursuit, location, and description of the vehicle on the radio. At that time, the supervisor will ask the pursuing officers any additional necessary questions (e.g., speeds being traveled, how the suspect is driving and if suspect is dangerously weaving, traffic conditions or road conditions), and the supervisor can terminate the pursuit at any time. Communications makes sure everything is being recorded. The supervisor must complete a use-of-force form which is the same form used if physical force was used to arrest someone. The form and tape and any other evidence go before a use-of-force board, and a determination is made whether use of force was justified.

At the time of the contact, Sarasota was in the middle of a DUI enforcement grant and had five video cameras which had been in use for about six months. Every traffic stop, including DUI stops, are now taped, because when the blue lights are turned on, the camera is automatically activated. The officer we contacted had made 5-6 DUI arrests since getting the video camera and only had the opportunity to turn the camera on one time (before the blue lights were activated) to tape the person's driving before the stop. He also does not want to turn the camera on often when following someone who might be a DUI because it wastes tape if the person does not display further cues. More important, it might give the defense in a DUI case a reason to argue probable cause, for example, by showing that the officer followed 18 cars before finally getting the defense attorney's client.

Field Investigation. The officer asks to see the individual's driver license, registration and insurance and might ask the person his or her destination. If an odor of alcohol is detected, especially coupled with other cues (e.g., bloodshot watery eyes, slurred speech, dilated pupils, flushed face), the officer will not ask if the person has been drinking, but rather, "how much have you had to drink tonight?"

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Reportedly, the typical answer will be “a couple.” During this time the officer is making observations such as: did the individual retrieve the vehicle registration easily, or fumble while searching for the license, how many times did he or she pass over the driver license before pulling it out? The police do not use passive sensors; passive sensors are not allowed in the state of Florida. (This may change under a pending DUI law, but details were not available at the time of the contact.) At one time, a pre-arrest breath test was allowed, but habitual or repeat offenders knew about it and would request it to stall for time, because the results were not admissible. The jury could not even be told that the individual had been given a pre-arrest breath test. It was more of a hindrance to law enforcement than a help.

The video cameras are used to tape the field sobriety tests. A backup patrol unit will be called if one has not already arrived and the backup officer will operate the camera to insure the tests are conducted within the field of vision of the camera and the audio is clear. However, another officer is not required to be on the scene.

Officers request that suspects perform five field sobriety tests. The field sobriety tests used are the balance test, alphabet test or counting test, heel to toe walking test sometimes while counting, finger to nose test, the one-legged stand, and gaze nystagmus. The horizontal gaze nystagmus is used because, although it is not admissible in court, many officers believe it is the true indicator of DUI and the person we contacted has been using it since 1984. The finger to nose test version used involves pointing straight forward and with the tip of the index finger, touching the tip of the nose, and then out to the side and touch index finger to nose. It is noted not only how well the person performed the tests but how well he or she was able to follow the instructions. Points are taken off for making mistakes performing the field sobriety tests and for failure to successfully complete each test. Often the tests will be demonstrated by the police officer so there is no question as to the instructions.

Arrest and Transport Violator. The suspect is arrested at the scene (but not Mirandized at this point), handcuffed and transported in a marked patrol car with a cage to central booking at the jail. The officer asks the person if an officer should legally park the car, have it towed, or call a friend or relative to come in a short period of time (5-10 minutes) and get the vehicle. The person must sign a waver agreeing to one of those options. The arresting officer typically stays with the suspect’s vehicle until it is secure, while the back-up unit transports the suspect. After the vehicle is secure, the arresting officer proceeds to the jail.

Post Arrest Investigation and Processing. The breath testing machines are at the jail. There are breath testing technicians at the police department and, if available, one will meet them at the jail; otherwise, many of the jail personnel, such as detention officers, are trained as breath test operators. The suspect will be turned over to a detention officer, but the arresting officer will stay through the booking process. The officer will stay and observe the person for a 20 minute waiting period to see if the

person put something in their mouth, drank water, belched or vomited. If any of those things occur, the 20 minute waiting period is started again. If, however, the person is a repeat offender and knows this, as a recent arrestee did and used the waiting period by belching every time at 19 minutes to start the waiting period again, the officer will inform the individual that a refusal to take the test will be recorded. During the waiting period, the jail personnel collect the personal property, the officer gets employment information, physical information and everything that is needed to prove probable cause and possibly completes the paperwork. The breath test is not video taped or audio taped. Individuals are finger printed and photographed.

The arresting officer reads an implied consent warning, which is included on a standard form included with the DUI paperwork. The test is explained to the individual who refused who is then told the driver's license is suspended for one year for refusing the test on the first offense and 18 months on the second offense. The suspect is told that a refusal can be used against him/her in court; the person is asked if he or she understands what has just been explained. The person is then asked to sign either yes (will take the test) or no (refusal), and the form is included in the case paperwork. If the person takes the test, the breath test results and paperwork are included with the arrest paperwork. An alcohol influence report is then completed which includes detection cues, field sobriety test information, suspect's manner of speech, and what the person was wearing. Defense attorneys will sometimes ask questions in court on the last two items to test the officer's memory and observation skills.

There is an 8 hour hold policy on DUI arrestees. In most cases, the person will not be released unless there is someone to come and pick them up.

Arrest and Processing Time. It will take the average officer a minimum of two hours (and up to three hours) to process a DUI and be back out on the streets. Traffic officers can typically process in 1 ½ to 2 hours, but it takes other officers longer. The regular officers might not have all of the necessary paperwork. The traffic officers carry manila envelopes with one of each kind of form that could be needed to process a DUI.

Prosecution Support. Cases go to court within 3 months. DUI cases do not go to trial often, usually only when the person might face jail time (e.g., a repeat offender, or an injury or fatal crash), or when there is a "low blow" (BAC = 0.08-0.10).

There are administrative hearings for driver licenses or depositions or trials. An attorney can no longer get a deposition unless jail time is being requested or special circumstances exist. Arresting officers used to give depositions on almost all DUI cases; the person contacted made 63 DUI arrests in one year, and he thinks at least 50 went to deposition. That was because an attorney could look at the evidence and

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then decide whether to defend it further, or tell their client to forget it. Now, there is a DUI suspension hearing which is administered by the Florida driver's license people in Bradenton. The hearing officer will listen to the probable cause, will listen to all of the witnesses, and will ask questions. If the hearing officer deems that there is probable cause for the DUI, the suspension will stand. At these hearings, the attorneys now get a "free deposition," because they can ask the officer any related questions. One attorney tells the officers that every DUI case he defends, he will take to administrative hearing even though he knows he will not get the driver's license reinstated, because by going to the hearing, he will find out everything the state has on the defendant.

There is a *live file policy* which means every DUI case goes to the state attorney's office and charges are filed, whereas on other misdemeanor charges, the officer goes to a pre-filing interview and presents the evidence and the state's attorney then decides whether to proceed. Many times the officer will not see the state attorney until trial time. If the officer gets a trial subpoena, sometimes a good state attorney or a new state attorney will call the officer before and ask to set up a pre-trial interview to prepare for the trial. They will go over all of the paperwork and what the officer's testimony will be. Before, when formal depositions were usually given, everything was transcribed and the officer had to adhere exactly to the deposition. Our contact person believes it is beneficial to no longer have formal depositions as often for attorneys to argue.

Handling Juvenile Cases. Juveniles are processed the same, except there is a juvenile referral form instead of a probable cause form. For DUI, juveniles are handled through the adult court system (county court), whereas for any other offense, they would go to juvenile court. Juveniles are supposed to face the same penalties for DUI as adults, but in reality they do not usually receive the same penalties as adults. Juveniles cannot be detained more than six hours, and they are typically released as soon as possible to a parent or responsible adult.

Comments. The person contacted is attempting to set up a DUI tracking system in Sarasota, Florida. The purpose is to provide meaningful data on DUI arrests, test refusal rates, and outcome of the cases. Most police officers do not have closure on their arrests. Sarasota is small enough, that if officers know an individual has a license suspension for a DUI arrest, they could pull the individual over if they see that person driving. Also, the hope is to track officers' DUI arrest and conviction rates to help point out training needs. The individual contacted believes more training is necessary for officers to detect and process DUI offenders.

MIRAMAR, FLORIDA

Department Size. 111 police officers, with a budget for 119.

State Laws. BAC limits are 0.08 in Florida. There is an 0.02 law for persons under the age of 21. If someone under 21 is stopped for any reason, and the officer smells alcohol on the person's breath, the officer does not need probable cause for DUI at that point to request a breath test. If the person does not give a breath test, he/she will be given a citation and will lose his/her license for a period of one year. If the person takes the test and blows a 0.02-0.08, the result is loss of license for six months.

Training. General patrol officers are trained in DUI detection (driving patterns to look for) and there is heavy emphasis on DUI apprehension, although a lot of the officers, if they believe they have a DUI suspect, will call for a specially trained DUI officer (any of the traffic officers) to conduct field sobriety tests after the stop and make an arrest if necessary. This has improved the department's prosecution rate. The traffic officers are highly trained and can close loopholes in suppression hearings better than other officers. The overall police department DUI arrest rate has increased; although DUI arrest rates for most officers have decreased, those made by traffic officers have increased. General patrol officers, not just in the traffic division, who have shown a strong interest in apprehending DUI suspects and who had the best rates for stopping and/or arresting DUI suspects, are sent to an advanced training course.

Enforcement and Apprehension. Every other month DUI checkpoints are conducted in Miramar as a joint effort with other police agencies in the area. Multi-agency checkpoints are conducted because of the personnel needed. The officers from Miramar, in turn, travel to other areas to assist with checkpoints. They usually participate in two checkpoints a month. They have received a startup grant for DUI enforcement from the state of Florida to help focus DUI enforcement and consequently have become more aggressive with DUI enforcement.

The Miramar police and members of the state attorney's office sat down and planned the checkpoints before any were held so that the procedures would hold up in court. The sheriff's office and other police agencies in south Florida conduct roadway interviews where traffic is funneled down into one lane and an officer greets and talks with drivers, directing those suspected of being under the influence into a separate area to other waiting officers. The problem with this procedure is that if hundreds of cars passed through the checkpoint, and an officer stopped every third vehicle, that officer spoke with a lot of drivers and it is hard in court to say exactly why impairment was suspected. The agencies often do wire the officers to record the reasons, but it is still difficult and they often lose suppression hearings. In Miramar,

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the procedure requires more officers to allow for three areas of traffic flow. An officer flags every third or random number vehicle into the area of traffic flow where officers are waiting. These drivers will be interviewed, whether impaired or not. The same officer that suspects a driver of DUI stays with the individual through the entire procedure. This way one officer has first-hand, first-sight knowledge of impairment. They have not lost a suppression hearing in the year since this procedure has been followed.

DUI enforcement officers are given alcohol related crash rates by area so they know what areas to patrol more heavily. There are two full-time DUI enforcement officers who only do DUI enforcement. Their schedules are adjusted to cover peak crash times so they can patrol to stop DUI suspects and cover any crashes which may occur. In addition, the Traffic Unit (budgeted for seven officers and one sergeant, currently operating with six officers and one sergeant) has either a monthly "blitz" or a checkpoint. As an example, on Memorial Day Weekend, the traffic division ran a two day blitz, "wolfpacking" for two nights where roving patrols were used. Officers also address enforcement problems they may be having during part of the night. Marked patrol cars, motorcycles and special units (Chrysler Intrepids with no roof lights mounted, only police markings on the sides of the vehicles and equipped with video cameras) are used in DUI enforcement. There is typically one officer per vehicle, and both moving and stationary surveillance are used for DUI detection.

Officers responding to crash scenes are trained to look for signs of alcohol involvement (staggering, odor of alcohol, disheveled clothing, driving patterns). A DUI arrest where a crash has occurred is reportedly very complicated in Florida for police officers to investigate (a lot of paperwork, etc.) which is made easier by calling a special DUI officer to the scene. There is no intimidation factor for general patrol officers because they know they can just call a DUI officer to handle the case. At either a crash scene or a typical DUI stop, the first officer there would remain even after a traffic officer has arrived to take over any testing and subsequent arrests. The first officer would secure the scene and would witness the field sobriety tests, etc.

The Miramar Police Department has a pursuit policy which states they can only chase violent felons and does not make an exception for DUI; officers basically cannot pursue DUIs. The officers videotape as much as possible of the DUI suspect's driving pattern and the stop. Or if an officer has stopped an individual for a standard traffic violation (such as running a red light) and then, after approaching the vehicle, the officer suspects alcohol involvement, the audio and video would be started at that point. Field sobriety tests are usually taped.

Field Investigation. When the officer suspects DUI, he or she begins building the case immediately. The officer asks the individual for a driver's license and will ask the individual to step out of the car for voluntary roadside testing. Miramar officers conduct standardized field sobriety testing (one-leg stand, heel to toe walk and

HGN). They do not have passive sensors or PBTs; Florida does not accept these devices as evidentiary proof of impairment. The officer contacted is afraid that if someone is suspected of consuming alcohol and is given a preliminary breath test and blows 0.08 or higher, that person will refuse the evidentiary breath test. While some police agencies in Florida use preliminary breath tests, Miramar at this point does not. If they suspect someone is over the legal limit, the person is asked to submit to the evidentiary breath test and if they blow a 0.08 or higher, the officers have definite proof which will hold up in court.

Arrest and Transport Violator. The suspect is arrested at the scene, handcuffed, and taken to an alcohol testing facility which may be at the central station, at a satellite facility (these are located throughout the county), or a mobile van. The vans park in areas of the county where the workload is and others are at various police stations. Suspects' vehicles are towed to a central pound. At checkpoints, there is a "paddy wagon" at the scene for individuals charged with DUI.

Post Arrest Investigation and Processing. If the officer does not have video capabilities in the patrol unit, the suspect would be brought to a facility, breath tested, and then videotaped while completing the field sobriety tests (the officer would probably have had the individual do field sobriety at the scene also).

For checkpoints, a mobile BAT van is there to provide breath testing capabilities. The field sobriety tests are videotaped.

Individuals arrested for DUI are taken to the central facility where there is an 8 hour hold policy or until the person's BAC is down to 0.02. But generally everyone is just held 8 hours so retesting would not be required. If someone has a high BAC (the officer thought 0.26 or 0.28), that person must be taken to a hospital for medical clearance.

Arrest and Processing Time. Dedicated DUI officers can do the necessary paperwork and process a typical DUI suspect in 90 minutes, but can be back out in as little as 45 minutes if necessary. This would mean conducting field sobriety tests, making the arrest and getting the suspect to a BAT van. The officers do not hand write reports; they audio tape the reports and turn in the tapes for transcriptions which they later proof and sign. The officers can audio tape their reports while back out on patrol or while *en route* to another scene.

Prosecution Support. Cases go to court as specified by a preset schedule for "regular misdemeanors" (which includes DUIs) as set by the county.

Because license suspensions are automatic, most cases reportedly go to a driver license hearing before a magistrate or a hearing officer (not necessarily an attorney).

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There are no rules for evidence, so any question can be asked, and the officers must mandatorily go to these hearings (each one taking close to an hour of the officer's time). It was described as almost giving a deposition. Dedicated DUI officers can spend 2-3 days a month at these hearings because of the large number of arrests they make. The officer contacted believes defense attorneys use these hearings to find out if they can fight the charges for their clients or if they should advise the clients to plead guilty.

Also, for every checkpoint, officers usually end up reporting to at least one suppression hearing. (Once one suppression hearing has been lost on one defendant, the others will typically plead guilty.) The few he has seen go to trial "get hammered."

For the few cases that proceed to trial, it could take a day of the officers' time who were involved in the case. Officers are asked about their training, if they actually saw the person (probable cause), how many DUI arrests they have made. The initial officer is called (what patterns were observed, why the stop was made), the arresting officer and breath testing officer (if a different person). Initially, the officers who made the stops and then called in dedicated DUI officers were asked why they had not made the arrests, meaning because they were not certain the suspect was impaired. That line of questioning ceased when it was made clear that the officers called in the dedicated officers to give the person arrested the benefit of the doubt ("yes, I thought he might be impaired, but I called in a special, experienced officer to make the call"). The dedicated officers wear different uniforms in court which sets them aside from regular officers; this is to impress upon the jury that these are highly trained, specialized officers in the DUI field. All of the traffic officers have been brought up through accident reconstruction and homicide investigation school (each of which are several months of training), as well as DUI detection, so these officers are highly trained and this helps their testimony hold up in court.

Handling Juvenile Cases. Juveniles are handled the same except they are taken to a juvenile facility. There is a difference in some of the forms completed by the officers. Florida's 0.02 bill for juveniles goes into effect in January (1997); there will be administrative hearings for impairment for levels 0.02-0.08. As stated before, while some police agencies in Florida use preliminary breath tests, Miramar at this point does not. The officer contacted is afraid that if someone is suspected of consuming alcohol and is given a preliminary breath test and blows 0.08 or higher, that person will refuse the evidentiary breath test.

Comments. For every checkpoint held, an invitation is extended to the state attorney's office to observe and reportedly someone from that office always attends. This helps the attorneys understand what the police officers are doing. (Also see checkpoint procedures under the *Enforcement and Apprehension* section above.)

Our contact believes if there is one problem with the system, it is that DUI offenders do not receive enough jail time. If they got 30 days for the first offense without appeals, plea bargaining, etc., he believes there would be fewer drunk drivers.

Miramar officers have worked very closely with MADD (one traffic officer was the President of the local MADD chapter for the last year), and the MADD organization has aggressively assisted the Miramar police. At the checkpoints, neighborhood citizen groups attend and observe from lawn chairs, cheering when officers make an arrest. They provide moral support for the officers and often provide snacks and sodas, too. The Miramar officers have a good reputation in the community for their DUI enforcement.

DECATUR, ILLINOIS

Department Size. There are 155 officers in the Decatur Police Department.

State Laws. Illinois has a zero tolerance law for persons under 21 years of age. Any alcohol at all is cause for license suspension (no arrest unless over 0.10). The law is the same for DUI for juveniles and adults (≥ 0.10). It is presumed individuals are intoxicated at or above 0.10, at 0.05 to 0.10 there is no presumption, but a case can be built on other factors such as field sobriety tests and probable cause. Under 0.05, it is presumed that the person is not intoxicated. (**NOTE:** These state laws were in effect at the time of the contact; at the time this report was written, the BAC level for DUI in Illinois was ≥ 0.08 .)

Training. Detection cues include driving with lights off, weaving, speeding, driving too slowly. Cues do not vary based on vehicle or occupant. There is not a department policy to look for signs of alcohol involvement when responding to a crash scene, unless the situation suggests alcohol might be involved, and this decision is generally left to the individual officers. (If person is glassy eyed, has slurred speech, etc. which does not appear to be injury related...smell of alcohol.) Nearly all Decatur police officers are trained in horizontal gaze nystagmus.

There is no set policy, but typically in a driver fatality crash, BAC is obtained for the victim if the situation suggests alcohol might have played a role (e.g., not in a family crash with victims going to church Sunday morning, but in a single vehicle, high speed crash late Saturday night).

Enforcement and Apprehension. Regular marked police vehicles are used in anti-DUI enforcement. Any Decatur police officer would be watching for intoxicated drivers. Officers must have probable cause to stop a vehicle: speeding, improper lane usage, equipment violation (even no license plate light). They use checkpoints (called roadside safety checks) three times a year, saturation patrols and general patrols. One dedicated DUI officer is on roving patrol for six hours every Friday and Saturday night, supported by a grant from the Illinois Department of Transportation. The person we contacted believes the public is *not* aware of the roving patrol and one of his goals is to create public awareness.

One patrol car has a video camera mounted with a set view out of the front windshield of the patrol car. Decatur's "best DUI officer uses it faithfully," but *all* DUI stops are not taped. They originally started taping the conversation, but a constitutional question came up and the issue has not been resolved. He thinks the audio may have to be thrown out in some of their cases.

The Decatur police have a written pursuit policy which, summarized, says if the risk of the pursuit outweighs the necessity of making the stop, the officers do not pursue.

They do gather information from the time the officer decides to make a stop, right now by radio and soon they will have computers in the cars. If a pursuit is necessary, the officer is usually already in contact with central headquarters. Departmental policy requires the officer to relay the charge against the person being pursued, and the speed of the vehicle. A command officer would be listening.

Typically, officers do not think about DUI as a possibility unless alcohol containers are being tossed out of the car, or a driver does not appear to be in control of the car, possibly evidenced by weaving or very slow driving.

Field Investigation. Officers always ask for a driver's license and proof of insurance first. The officer starts building on probable cause for an arrest (e.g., glassy eyes; slurred speech; fumbling for license, can't find the license; smell of alcoholic beverage on the breath, etc.). Next, the person would probably be asked to step out of the vehicle to a safe area. A backup unit would have been called by this time as protection for the first officer and to provide a witness to the field sobriety tests. Choice of those tests are at the discretion of the officer. Typically, the officer might ask the person to walk heel to toe, stand on one foot, count to some number, finger to nose test. The officer would normally select three tests unless conducting the tests would endanger the person. The field sobriety tests are not videotaped unless they happen to be performed within the field of vision of the permanently mounted unit on the patrol car. They have PBTs. The suspect is advised of the implied consent law and told they have to take a test. (PBT results are not admissible in court.)

The decision to interview witnesses, passengers, etc. is usually left up to the arresting officer; there is no formal policy.

Arrest and Transport Violator. The individual is arrested at the scene and is Miranda-ized. Department policy is to handcuff every violator who has been arrested and transport the individual in a patrol car. Typically the violator is transported in the backup unit which would have a cage. Usually the traffic car makes the DUI stops and the traffic car does not have a cage. There is a paddy wagon which is usually used only on weekends. Officers have used the paddy wagon at the roadside safety check, but usually transport each person arrested individually back to the central station with another squad car following.

Post Arrest Investigation and Processing. The units return to the central station and drive into a salleyport, which is an enclosed area the squad cars pull into and overhead doors come down to secure the area. This is to provide officer safety and so the suspect does not escape. The officers then place their weapons in a lock box and then remove the individual from the car and proceed to the pre-book area with sliding heavy metal doors operated automatically from inside the central station. They proceed to the DUI testing room. Most of the officers are trained as BAC

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operators. The arresting officer becomes the camera operator. All individuals being tested in the DUI room are videotaped (sight and sound). The backup officer normally does the testing. Another set of sobriety tests are given (not always the same ones as at the scene). Then the suspect is asked for a breath sample. The offenders are advised of the implied consent law and told they have to take a test (they already have been admonished at the scene) or forfeit their license by suspension. The officer contacted thinks “more often than not the person will test, but there is also a high percentage who will not test.” The post arrest investigation and processing policies and procedures do not vary by surveillance strategy.

In Decatur, the Decatur police and the county sheriff use the same jail facility and it is the sheriff who decides jail policy. However, they do not release the person’s car for six hours after the arrest. Unless the individual is arrested in his/her driveway, or there is someone sober in the car that can drive it, the car is towed by a private vendor for the police department.

Arrest and Processing Time. There is much paper work to complete for a DUI arrest. It takes a lot of time and takes the officer off the street. The officer contacted thinks the DUI laws need to be simplified so that such an outrageous amount of time is not taken in processing suspects. Defense attorneys often don’t try to prove the person was not intoxicated, but that the police did not follow all of the rules and “there are many rules” so it is easy to make a mistake. It was estimated that there are “about four hours of red tape.” This consists mostly of paperwork and reports because they do not like to lose DUI arrests.

Prosecution Support. Court dates are typically 30 days from date of arrest. Officers do talk with prosecutors prior to trial. Officers must attend trials to determine probable cause for the stop and evidence that the person was intoxicated (arresting and testing officers). The testing officer must certify he or she is a qualified breath testing operator. Because proceedings in the DUI room are videotaped, many times the cases are plea bargained by “an aggressive” state’s attorney. The officer thinks “there are probably not 5% of people arrested for drunk driving who have a trial.” Officers rarely testify at administrative hearings.

Handling Juvenile Cases. Juveniles in Illinois cannot be held with adult offenders.

Charging Process. Decatur does not have pretrial diversion. The arresting officer forwards the reports to the Traffic Prosecutor’s office. The person appears in court about 30 days later. The only time a DUI charge is reduced (usually to reckless driving) is when a BAC is below the legal limit, usually 0.07 - 0.09. The charge won’t be reduced if the person has a prior DUI or if there was a crash. When individuals are arrested and take the breath test, the prosecutor we contacted estimated 90-95% blow 0.10 or higher. She thought it was “pretty rare” when someone is arrested and blows below the legal limit.

She thinks that the videotape made in the DUI room at the central law enforcement facility (which includes field sobriety tests and the breath test) and the fact that usually two officers have witnessed and can testify that the person arrested for DUI was intoxicated builds strong cases. She cannot recall any time that the police officers have not provided the necessary reports or videotape to support a case and believes they are very well trained.

To check records for prior offenses, the prosecutor's office orders the driving abstract immediately upon receiving the report for an individual charged with DUI. They also run a records check in the county to see if there are prior records and request a driving abstract through the Secretary of State's office. If there is a reference to another state in the police reports, such as the person had a driver's license in another state or had resided in another state, then the prosecutor's office will run a criminal history on the person to make certain the person did not have any prior "supervisions or arrests for DUI."

Arraignment. There are nine judges and one of the judges is assigned to traffic court. Every morning at 8:30 there is arraignment court for traffic violations. The DUI offenders are arraigned along with other traffic tickets. The traffic court judge will handle all aspects of a DUI case including petition to rescind, etc., except if it goes to trial. Then any judge might handle the case.

Trial. The only time the arresting officer is present is when subpoenaed by the prosecutor's office and that would only be for a bench trial, a jury trial, or if there has been a petition to rescind filed and the prosecutor needs the officer present. The prosecutor we contacted said a very small percentage of people charged with DUI go to trial. She thinks a lot of it has to do with the DUI room videotapes. The person knows if the case goes to trial, the videotape will be shown. She thinks less than 10% go to trial. The cases which go to trial are typically repeat offenders who are afraid if they lose the case, they will lose their license (which is usually the situation).

Appeal. For an appeal, defendants must file a motion with the court that heard the trial, up to the appellate court, then up to the supreme court. The prosecutor could not think of any typical issue which would be used as grounds for appeal. She has heard about double jeopardy in other states (when person refuses to take breath test and the license is suspended for that statutory summary suspension, then prosecuting the person in the court system for the DUI is double jeopardy). That has gone on appeal a couple of times in Decatur, but the appellate court has held that it is not double jeopardy.

Admin Per Se. If person blows 0.10 or higher, the license is suspended for three months; a refusal is 6 months. If a repeat offender takes the breath test and blows over the legal limit, the license is suspended for one year; if a repeat offender refuses

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the test, the license is suspended for two years. No hearing is required. The only court procedure is the person can try to get a judicial driving permit from the judge to drive during that time. The only other hearing is a petition to rescind, and there are only a few allegations the person can bring up to try to get rid of a suspension (e.g., the officer did not have reasonable grounds to believe the person was under the influence, the person was not placed under arrest for the charge of DUI, was not properly warned, or for some reason the person said he or she did not refuse to submit - the last one she has never seen brought up). She said the petition to rescind happens rarely anyway. Reportedly, in her county the officers do a “real good job” and there really aren’t too many issues to try and fight. Once a petition to rescind has been filed, it needs to be heard within 30 days.

The prosecutor questions police officers in court about their qualifications, ascertaining that they have been trained at the academy when they became police officers. There is follow-up training down the road, depending upon how long they have been police officers. She thinks the police in her county do an “exceptional” job handling DUI cases.

Comments. “The first DUI laws were so complex that cops, even those with training, stopped making drunk driving arrests.” There was so much red tape that it was easy for a lawyer to get the case thrown out. They have relaxed some, but “it seems like the pendulum is swinging back toward” making it impossible to charge the person with DUI; police don’t even get far enough to have to prove the person was drunk. If the lawyer can find one little place “where the officer did not go by all the rules, and there are a lot of them,” then the case is thrown out.

NORMAL, ILLINOIS

Department Size. 57 sworn officers with a couple in the training academy (authorized for 60). The Normal Police Department does not have a traffic unit.

State Laws. Illinois has a zero tolerance law for persons under 21 years of age. Any alcohol at all is cause for license suspension (no arrest unless over 0.10). The law is the same for DUI for juveniles and adults (≥ 0.10). It is presumed individuals are intoxicated at or above 0.10, at 0.05 to 0.10 there is no presumption, but a case can be built on other factors such as field sobriety tests and probable cause. Under 0.05, it is presumed that the person is not intoxicated. (**NOTE:** These state laws were in effect at the time of the contact; at the time this report was written, the BAC level for DUI in Illinois was ≥ 0.08 .)

Training. Officers are trained to look for detection clues including the following: improper lane usage, speeding, driving with bright lights on, or stopping too far into an intersection instead of behind a stop sign. They have not found that certain detection cues are more prevalent in certain drivers. After stopping a DUI suspect, officers are trained to observe DUI detection cues such as slurred speech (“mush mouth”), glassy eyes, inability to understand questions or follow directions, odor of alcohol, or open containers. Officers do look for signs of alcohol involvement at crash scenes.

Police in Normal have video cameras in the patrol vehicles but they are not always used; “there are probably only a couple of officers who do it.” Fortunately, in their county, officers do not have a difficult time getting DUI convictions. If officers write good reports and do their jobs right, they don’t have a lot of problems. If they were losing a lot of DUI cases, the officer contacted believes the video cameras would be used more frequently. He used the video cameras a lot on night shift, but none of his tapes were ever played in court.

Enforcement and Apprehension. The officer coordinating the local alcohol program reports operating funds are received from NHTSA and the Illinois Department of Transportation (IDOT). There is one officer on general DUI patrol on Wednesday, Thursday, Friday and Saturday nights. Both stationary and moving surveillance are used. They use more officers on holidays. The general patrol officers are busy enough that when they get a DUI suspect, they will call for a “DUI car” to come over, if one is available, and have that officer do the field sobriety tests and make any arrests. There is normally one police officer in a marked patrol car; the department does not have motorcycles. The Normal Police Department conducts a minimum of two roadside safety checks each year. They occasionally conduct saturation patrols, but this form of surveillance is used “least of all.”

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There is a pursuit policy which covers emergency driving in general and that includes DUI pursuits. The Normal Police Department and all of their policies have been nationally accredited. In addition to the pursuit policy, there is also a DUI Countermeasures directive. If an officer was pursuing a DUI suspect and speeding ensued and they were in a downtown location with traffic (where there would be a greater chance of a crash resulting in injury or death), the officer would probably stop the pursuit.

Field Investigation. From the time an officer observes a DUI suspect (before the stop and after) everything that the officer observes helps him or her form an opinion as to if the driver is under the influence. Every stop is different, but all of the little components add up to either arresting the driver or letting the driver go. Sometimes the driver does not understand the officer's questions or responds inappropriately. (An example given was when asked for a driver's license, the driver produces a credit card.) As soon as an officer decides to have the person exit the vehicle, the officer calls for a backup unit. It is not dictated by policy that the first officer has to wait for backup to arrive before proceeding; sometimes they wait, sometimes they do not, often depending upon how close the backup unit is to the scene.

Officers are provided with training to conduct field sobriety tests. The standard tests used are the alphabet test, the horizontal gaze nystagmus, the one-leg stand, the walk and turn, and the finger to nose test. The officer contacted always conducts them in the same order, but this may not be true of other officers because there is nothing that dictates a testing order. Field sobriety tests are sometimes videotaped "but no more than anything else." PBTs are available to the officers, but again, these are not widely used.

Arrest and Transport Violator. Arrest procedures vary from case to case, but generally the person is handcuffed, arrested at the scene, and transported to the county jail where the paperwork is done. If there are traffic charges or criminal charges, typically the person is arrested at the scene, transported back to the jail and asked to perform field sobriety tests there instead of at the scene. The room at the jail is safer, well lit, with level floors to conduct the tests. Arrested individuals are transported in the patrol car of the arresting officer to the county jail. These procedures typically do not vary for different surveillance and detection strategies. For example, at a checkpoint, the officer who suspects an individual of DUI will direct the car off to the side, administer field sobriety tests, and if the officer arrests the driver, the officer will take a patrol car from a pool of patrol cars at the checkpoint and transport the individual to the jail. Witnesses and passengers are sometimes interviewed (usually a cursory interview).

Post Arrest Investigation and Processing. At the jail, officers complete the necessary paperwork (warning the motorist form, summary license suspension, traffic tickets, alcohol influence report, breath test paperwork) and then turn the individual over to

jail personnel who take care of booking procedures and processing. Usually the arresting officer conducts the breath test, if the officer is certified; if not, usually another certified officer from the Normal Police Department. Sometimes if a state trooper is there and is certified, the trooper will handle the breath test, just as Normal certified officers assist non-certified troopers at times.

Once DUI suspects have been processed, if they can make bond, they are released on bond. Vehicles, however, are impounded for six hours.

Arrest and Processing Time. An average of two and one-half to three hours of an officer's time are necessary to process a DUI suspect.

Prosecution Support. Most individuals plead guilty and the cases do not go to trial. A very small percentage of DUI cases go to trial; the officer we spoke with has only had three cases in five years go to trial. Court dates are set 14-45 days from date of arrest. DUI cases must appear on Tuesdays at 1:30 p.m. If a case does go to trial, officers will meet with prosecutors before the trial "on a good day" but prosecutors are very busy and sometimes this does not happen. Sometimes officers have a minute or two before the trial with the prosecutor and sometimes they will have 30 minutes.

At trial, officers are usually questioned on technical issues. Typically a case will not go to trial unless they have found a "fatal flaw." (Example given was the officer did not read the warning to the motorist before the breath test. Occasionally, passengers in the car will testify that the driver passed all of the field sobriety tests in their opinion. But usually there are technical reasons why a case goes to trial in Normal.)

The arresting officer would be called to testify at a trial, sometimes the breath test operator if this was a different officer, and backup officers. All officers whose names appear in the report are typically subpoenaed, but they are not always asked to come in and testify. Usually trials require about 2 hours of an officer's time.

Officers are required to testify at administrative hearings (called a petition to rescind) and this happens more often than trials. The officer contacted estimates 5% of DUI arrests result in the arresting officer being called to an administrative hearing.

Handling Juvenile Cases. Juveniles in Illinois cannot be held with adult offenders. Juveniles are either processed at the police station or at the sheriff's desk as opposed to the county jail. Normal has centralized booking at the County Jail and there is a DUI processing room there. Parents or guardians of juvenile DUI suspects are contacted; when they appear at the station the juvenile is released to their custody. The vehicle is still towed and impounded for six hours (this is state law).

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Comments. Officers believe there is too much paperwork involved in the process. For example, after completing an alcohol influence report, officers are asked to summarize the report so others do not have to read it. This report contains the results of the field sobriety tests which are also included in the arrest report. “Everyone is battling for their own time” but no one is concerned that it takes officers three hours to do the paperwork and get back out on the street. The process should be shortened and streamlined.

WAUKEGAN, ILLINOIS

Department Size. 140 officers at the time of the contact.

State Laws. Illinois has a zero tolerance law for persons under 21 years of age. Any alcohol at all is cause for license suspension (no arrest unless over 0.10). The law is the same for DUI for juveniles and adults (≥ 0.10). It is presumed individuals are intoxicated at or above 0.10, at 0.05 to 0.10 there is no presumption, but a case can be built on other factors such as field sobriety tests and probable cause. Under 0.05, it is presumed that the person is not intoxicated. (**NOTE:** These state laws were in effect at the time of the contact; at the time this report was written, the BAC level for DUI in Illinois was ≥ 0.08 .)

Training. The two officers who work on DUI detection have received special training. Other officers are trained to operate the Breathalyzer and the shift (general patrol) officers also make DUI arrests.

Enforcement and Apprehension. Checkpoints are run several times a year, usually around holidays (the latest was on Labor Day when 400 vehicles were processed resulting in 6 DUI arrests, 4 arrests for open container violations, 14 drivers with no insurance, and 12 with no valid driver license). There are 2 officers who work on DUI detection and who are funded by a state grant. "They drive around (separately) and look for DUIs." Marked police units are used for DUI patrolling and typically moving surveillance is utilized with occasional stationary surveillance. Officers watch for detection cues such as sudden braking, swerving, and driving across the center line. Additional detection cues used after the stop are gaze nystagmus and a portable breath tester kit. Reportedly, officers always check for alcohol involvement at a crash scene.

A pursuit is at the discretion of the shift commander who can call off a pursuit anytime deemed necessary. The pursuit of a DUI suspect is handled the same as any other case. A pursuit usually consists of no more than three police units (original unit, one following that unit and a third running along on a side street).

Field Investigation. The officers have suspects perform field sobriety at the scene; they follow a sheet of procedures. Suspects are asked to perform the walking test, touch their nose, etc. They have no video or audio tape equipment in the units or at the station.

Arrest and Transport Violator. Usually the person is arrested at the scene and there is usually another traffic offense that goes before the DUI charge. The suspect is Miranda-ized but the officer contacted did not know if this happens at the scene or the station. Procedures do not vary much for different surveillance strategies;

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roadblocks require more officers (9-10). But after the routine roadside sobriety tests when there is probable cause, the suspect is brought into the station to blow into the Breathalyzer.

Post Arrest Investigation and Processing. Post arrest investigation and processing is done at the station. The suspect is allowed to request a blood or urine test. For a blood test, the individual is taken to a hospital. Individuals with high BAC levels are not released while still intoxicated; for dangerously high BACs, persons are transported to a hospital. On the booking process, officers must fill out an incident report, an arrest report, a motor vehicle report, a supplementary case narrative stating what happened, a property report if any evidence is seized, the warning to motorist, an alcohol influence report (marked if the test is refused), if the Breathalyzer is taken then the breath test operator's form with the printout, plus officers must issue all of the appropriate DUI citations. Sometimes offenders are released to other responsible adults. The suspect's vehicle is sometimes left on the street and is sometimes towed. At times witnesses and other passengers are interviewed.

Arrest and Processing Time. An officer spends 2-3 hours from the time a DUI suspect is stopped until the officer is back out on the street.

Prosecution Support. Each officer has specific court dates set by the traffic division. Court dates are approximately 30 days from date of arrest. If a DUI case proceeds to trial, the officer(s) typically meets with the prosecutor. On standard DUI cases, the officer(s) usually meets with the prosecutor immediately prior to the trial. At trial, officers are often asked about probable cause, exactly what happened, and then are questioned about the paperwork. Anyone who is on the police report could be subpoenaed to testify (arresting, breath testing, and/or back up officers). Officers sometimes testify at an administrative license hearing which does not take place for most DUI arrests.

Handling Juvenile Cases. Juveniles are released to parents, if no parents are available, the officer contacted does not know what happens but does not think for DUI offenses they are taken to the detention center. Juveniles in Illinois cannot be held with adult offenders.

Comments. It would be helpful to cut down the processing time on DUI arrests. They have been successful in enforcing anti-DUI laws due to the state grant.

OLATHE, KANSAS

Department Size. 119 officers with a total of 130-140 employees. Olathe does not currently have a traffic division in the police department; everything is run through the patrol division.

State Laws. BAC limits are 0.08 in Kansas.

Training. All of the Olathe police officers were trained in DUI detection cues through the police academy. Olathe does not currently have a formalized DUI education program; however, there will be one under the grant program. The traffic officers will receive education at a DUI detection program. Hopefully, over the next several years, all of the other officers will also receive the training, even if it has to be through their block training program where officers who attended the formal program train the other officers who did not attend. In Kansas, police officers need 40 hours of training every year to maintain certification. In Olathe, a number of officers are pulled each week over an approximately 6 month period of time, and these officers receive their 40 hours of training in different areas. Typically, the officers will attend two block training programs.

Officers watch for detection cues such as lane straddling or weaving back and forth which would cause officers to suspect DUI, but more importantly, officers look for anything unusual, i.e., there is a clear highway with little traffic, but a vehicle is traveling 10 miles under the speed limit or it stops at stop lights for an excessively long period of time. The officer contacted does not believe the cues vary by age of driver or type of vehicle; however, when their new computer system is in place they will be able to track those types of things. In the 20 years he has been a police officer, he has arrested persons of all ages for DUI, from underage teens to 70 and 80 year old people.

Enforcement and Apprehension. Olathe police conduct two checkpoints each year. They do not normally run saturation patrols. They use moving surveillance while on routine patrol as opposed to stationary surveillance. They have identified "3 or 4" hot spots such as popular bars and night spots in Olathe that general patrol officers "keep an eye on," but they do not sit out in the parking lots waiting for people to leave. They currently use only marked patrol cars for DUI enforcement. There is a grant which should soon provide four motorcycles, although it is not clear if these would be used for DUI enforcement, and two officers in one DUI car working a 4-10 shift (four days a week, ten hours a day-from 6 p.m. until 4 a.m. Wednesday through Saturday nights). Currently there are the general patrol officers working individually who enforce DUI laws while on routine patrol.

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When responding to crashes, officers look for signs of alcohol or drug involvement in the driver and passengers: odor of an intoxicant, blood-shot or watery eyes, slurred speech, etc. They do vehicle checks at crash scenes and look for signs of drug or alcohol use (liquor or beer bottles).

Olathe's pursuit policy states that officers should not pursue, unless a felony has been committed (e.g., homicide, kidnaping, robbery). Johnson County has a county pursuit policy, but most agencies have chosen to develop separate pursuit policies. In Olathe, for the safety of the public, if a violent felony has not occurred, then officers will usually not pursue. However, it is the sergeant's discretion, who is acting as the street supervisor at the time, who will advise a unit whether to continue or discontinue a pursuit. If someone suspected of driving under the influence was pursued by police, and the suspect increased vehicle speed to an unsafe level, the officers would typically be told to break off the pursuit.

Field Investigation. The Olathe police department does not currently have computers in the patrol cars, but are scheduled to be computerized by 1997; they are currently testing laptops. The first video camera was installed about six months ago, but it will not be used until a formal policy has been approved. As a result of grants, three more cameras are coming on three new traffic cars. In addition, the department does plan on acquiring more cameras. Officers will be encouraged to use the cameras for all traffic stops including DUI.

When about to make any traffic stop, the officer will radio to dispatch that he or she is about to stop a vehicle and relay pertinent information. When approaching the vehicle, the officer will first ask the driver for a driver's license, vehicle registration and insurance card. During that time, the officer will observe if the driver has trouble finding the license and registration (passing over the driver's license repeatedly while looking for it), look for blood-shot, watery eyes, check for odor of intoxicant, etc. Most officers carry a pupil dilation chart. They do not have passive sensors.

If the officer believes the driver may be intoxicated, the driver will be asked to step out of the car to perform field sobriety tests. Officers do not currently follow a standardized set of field sobriety tests. They are working to correct this problem during the training sessions mentioned earlier. Generally, a heel to toe test is done, an alphabet test or counting test (sometimes backwards) is used, and "some type of a standing balance test." Reportedly, many officers have different concepts of the balance test, but generally they use some type of one foot stance with head back and eyes closed; some officers have suspects keep their arms and hands at their sides, others stretched out. Specific instructions are given, the officer will often demonstrate the test, and it is noted if individuals cannot follow the instructions. There are plans to videotape the field sobriety tests; the DUI traffic car will have a video camera.

Olathe currently has alcosensors portable breath testers, as do most communities in Kansas, which may be administered. The readings can be used in court as circumstantial evidence, but the case is based on the BAT readings. There is a traffic citation issued if an individual refuses a PBT. Refusing a PBT is not an “arrestable offense” and is treated as an infraction which results in a fine. This is separate from implied consent (consent to take the evidentiary test at the station) where refusal is a criminal offense, resulting in license suspension for up to one year.

On DUIs or other “suspicious” traffic stops, classified as anything which might be more than a simple traffic ticket such as speeding, dispatch will send a backup unit. If an officer discovers after the stop that the person might be under the influence, the officer will immediately radio for a second unit. The DUI unit which will have two officers will not call for backup. It will also expedite the reporting process which is currently quite lengthy. All intoxicated drivers must also be fingerprinted and photographed. The entire process is reported to be very time consuming.

Arrest and Transport Violator. Individuals are arrested for DUI at the scene, frisked, handcuffed and are placed in the back of the patrol car and transported to the police station. Individuals are not Miranda-ized at the scene, but at the station preceding the alcohol influence report when they are questioned as to their activities before the arrest. This follows state statute. If after processing, the person cannot post bond, he or she is transported to the county jail. The police station has a 12 cell holding facility, but prisoners are not housed there.

On general patrol, normally vehicles will be towed unless someone can arrive in a short period of time to remove the vehicle (i.e., 15-20 minutes). The police department will generally not let the individual make the decision to leave the vehicle legally parked at the scene. This is because officers are charging that the person is impaired, but by allowing the person to make a decision, it could be argued as proof the person was not impaired. Plus, the police department would be responsible for the vehicle. Generally the backup officer handles vehicle removal.

Post Arrest Investigation and Processing. All of the processing is done at the police station. An arrest report is filled out, a medical screening report (to find out if the person is diabetic, had head injuries, etc.), the person is Miranda-ized, then an alcohol influence report is completed (contains questions pertaining to where the person was prior to the arrest), the person is photographed and finger printed (department policy for any alcohol or drug related crime and state statute for any A or B misdemeanor or felony) and an implied consent checklist is followed (checked off by officers as they proceed through the checklist). All Olathe police officers are trained in the process and all are also certified BAT operators. Previously only Sergeants were certified, until it was discovered how much of their time was spent

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in court. A second officer does not need to be present to witness or assist with the BAT.

Processing varies for a checkpoint, and the difference has been approved by a judge. People charged with DUI at a checkpoint will be released at the scene if they sign a notice to appear (a uniform traffic complaint) and can have someone who is not intoxicated pick them up at the checkpoint. Many times the person who picks the individual up is given a PBT. The bonding procedure is waived during checkpoints per agreements with the courts.

Arrest and Processing Time. It takes an officer an average of two hours to process a DUI.

Prosecution Support. First appearance in court is generally 20-30 days after arrest. All arrest violations begin at 8:30 a.m. on Thursdays and Fridays. The individual can plead guilty or not guilty; reportedly, most have an attorney for a DUI charge. Only a small percentage go to trial. There is a diversion coordinator and some individuals plea bargain. Officers will meet with the prosecutor prior to trial to go over the facts of the case. The officer, at trial, will most certainly be asked about probable cause for the traffic stop. Very few cases are lost in court, because, for the most part, the officers do a good job in presenting the case. If a case is lost, it is typically because the officer cannot articulate why the person was stopped. Generally, the arresting officer is subpoenaed, and if another officer administered the BAT, that officer would also be subpoenaed, and other witnesses might be brought into court, especially if there was a crash. For a jury trial, an officer may spend 3-4 hours, most of the time spent waiting to testify. The time will vary depending upon how much the defense presents; the prosecutor has a fairly straight-forward case covering the reason for the stop, actions the officer took, and the BAT readings. Officers must also testify at implied consent hearings (license revocation).

Handling Juvenile Cases. Processing juveniles is basically the same, except for they might receive an additional citation for minor consumption or possession. There is a slightly different jail procedure, but that is handled through the county. Prosecutors handle juveniles charged with DUI the same as adults. Sanctions for juveniles are the same as for adults.

Charging Process. The city prosecutor handles many of the DUI cases and is the person we contacted. Court is held twice a week; arraignments on Thursday mornings and trials and other activities on Thursday and Friday afternoons. DUI offenders would go through the city court or traffic division at the district court. If there is a DUI involving a crash with a fatality, that case would go to the county for the state to prosecute and also if the person is considered a DUI felony (received a third DUI within a five year period), or if they have already been declared a habitual offender for other offenses (driving while license suspended or number of offenses),

the case would go to the county. They do not reduce DUI charges; they dismiss the DUI charges and recharge with a more appropriate offense if they don't feel the case is strong enough. The city prosecutor's office handles about 350-400 DUI cases a year.

The prosecutor's office determines who is eligible for a diversion program. It checks to see if there are prior DUI offenses or prior alcohol related offenses which would make the individual ineligible for the diversion program. There are private evaluation agencies within the county, and also Olathe has a court services officer who does assessments of the individuals to determine what type of treatment clients need. An alcohol and drug safety action education program "ADSAP" evaluation is required by law. The prosecutor's office does a records check and requests a certified record from the state of Kansas. It runs a check through ALERT, which is based on Kansas City metropolitan information obtained by police agencies; if the person is from out of state or there is some concern, the office will run a National Crime Information Center (NCIC) check. They also obtain a Kansas Department of Motor Vehicles certified record, which is a history of the person's driving record. There is also an application the individual completes as to why the individual believes he or she is eligible for the diversion program. If they know the person is from out of state and is not a part of the violator compact act which would show up in Topeka, they would then contact the respective state and try to get a records check from that state.

The city prosecutor did not know what percentage of people charged with DUI plead guilty but he thinks it is a high percentage that either plead guilty or enter diversion. He guessed about 75% of DUI offenders are represented by counsel.

There are pre-trial motions to suppress evidence of either field sobriety or breath test results "all the time," and sometimes motions to suppress for an invalid stop. An officer does not have to be present for charging or arraignment. If a DUI case goes to trial, the arresting officer would be called to testify. Others called to testify might include any civilian witnesses, any officers who may have had to follow the vehicle and observe driving patterns, the officer who conducted the field sobriety test (and if necessary officers who witnessed the field sobriety tests), the records custodian who maintains all of the records for the BATs, and the officer responsible for administering the BAT test (if different from the arresting officer or the officer who conducted the field sobriety tests).

The city prosecutor thinks about quarter of those charged with DUI are set for trial but will plead guilty on the trial date or right before. When they or their defense attorneys find out everything is in order with the case, they might plead guilty. Either the attorneys come in and look over all of the evidence, or they may find out

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information at an administrative hearing and they convince their clients to plead guilty.

Elements of an offense include a positive BAC, failure of the field sobriety tests, and the elements of the driving that were involved before the stop. The Olathe prosecutor's office does take a hard stance on prosecuting DUIs; they prosecute with BACs below a 0.08 (not always successfully) if the police officers have indicated in their reports that they believe the person was not able to safely operate the vehicle. They prosecute cases where no field sobriety tests have been done.

Elements which might be contested include a low BAC, no observation of the person being unable to drive, and, most recently, individuals who may be passed out in a vehicle when the motor is running and there is the question of operating the vehicle and what "operating" means.

If a person loses in municipal court and wants to appeal, he or she must file an appearance bond with the municipal court and prepare a notice of appeal. Generally, such persons file with the court clerk's office who then files the appeal at district court level. It gets docketed on an appeal docket from municipal court up to district court. So they file an appearance bond to cover their appearance in district court and a notice of appeal for the case which gets docketed by the court clerk's office.

Grounds for appeal sometimes depend on who the attorney is, and most of the time it is the "borderline" cases that are appealed (e.g., perhaps no BAC, or someone who failed two aspects of field sobriety and passed two, but the judge found them guilty on other evidence). It is the harder DUI cases that the defendant and defense attorneys think municipal court may have just "brushed by" and found the person guilty, but that a jury may think otherwise.

Sanctions. There are not different sanctions for different BAC levels. Once there is a conviction, that information is sent off to the Department of Motor Vehicles, and the prosecutor's office is currently filling out Kansas Bureau of Investigation (KBI) forms on individuals convicted of DUI.

Assessments of individuals convicted of DUI are handled either by outside private agencies approved by the court or the court services officer who conduct the ADSAP evaluations. There is a district court judge in charge of this for the county, and he makes the rules and regulations regarding how these activities are handled. The municipal court and the prosecutor's office have adopted these rules and regulations. They refer individuals to the approved private agencies for assessments and treatment recommendations. If the individuals are eligible for diversion, the prosecutor's office would base the terms of the diversion on the ADSAP evaluations. If someone is convicted, then the terms of the assessment would help determine the level of treatment (a more structured program, inpatient, AA, etc.) the person would be

ordered to receive. The treatment requirements are put either into the person's diversion agreement or probation agreement. It is a function of the probation department to see that the requirements have been met. If there are problems or violations relating to non-compliance, then the probation officer will prepare a revocation agreement which the prosecutor's office will review to make sure everything is in order and then they will sign the revocation. The person is then brought in and, depending on the circumstances, may go to jail. During the sentencing, the prosecutor's office tries to work with the individual to come up with a plan with which the person can comply. If the person does not comply, the prosecutor's office would like to see the person sent to jail for at least a short period of time, but this does not always happen. They do have house arrest available as an option.

Sentencing. There are sentencing guidelines the judges follow which have been determined by the state as to what sanctions a DUI offender receives depending on first, second or third offense. These have been incorporated into the Olathe municipal code and the judge does follow the code.

Administrative Sanctions. Administrative forms are filled out by the police officers before the individual takes the breath test include the implied consent form. Those forms and what the police officers have to say is what the hearing officer typically looks at and listens to during an administrative hearing. If an officer made a mistake and did not follow procedure, that might be revealed at the hearing. The administrative hearing officer may determine that the license won't be taken. There is a "very set procedure" as to what the hearing officer may look at and what the police officers have to fill out for the administrative hearings.

Generally the offenses "fall off" of the certified (driving) record after a period of time; this is the record the prosecutors receive from the state. But if they check the ALERT system, or run an NCIC check, they can find a DUI conviction as far back as records are kept. And the prosecutor reports they do check ALERT on all DUI cases.

If there are prior old convictions (older than five years), the person could not participate in the diversion program, and it might make a difference to the judge in sentencing as to whether the person would receive the minimum or the maximum sanctions within the range set by the Olathe municipal code. For example, if a person was convicted of a DUI offense, and had two other offenses ten years before, the person would not be eligible for the diversion program and, hopefully, would receive the maximum sanctions possible for a first time offender. He also hopes this would be addressed during the evaluation stage. And they would attempt to make different recommendations at the sentencing. A person who has gone through the diversion program, even years before, is not eligible for the diversion program again. There

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have been cases where individuals convicted of DUIs twenty years ago are denied diversion, even though the court can only sanction them as first-time offenders.

Comments. Defense attorneys who find out that a police officer is properly certified and that the paperwork has been completed properly, will try to plea bargain out. The only time they go to court is when they see a hole or a problem in the case. The individual we contacted would like to see nationwide DUI certified training. Kansas has a program, but the Olathe police department has not had enough money to send officers through it. He discussed how training at Northwestern University Traffic Institute is highly recognized in court. He thinks if DUI training can be raised to the same level, with statewide or nationwide certification which would be recognized and would hold up in court, it would cut down court time and save money spent on cases.

TOPEKA, KANSAS

Department Size. There are between 230-250 officers in Topeka; several years ago the traffic unit was cut from 40 officers to approximately twelve, and seven of these officers deal with DUI enforcement. There is also an Alcohol Safety Action Project (ASAP) where officers work overtime or compensatory time and assist in looking for DUI suspects.

State Laws. BAC limits are 0.08 in Kansas.

Training. The person contacted has been a standardized field sobriety testing instructor for 18 months. With respect to surveillance, he uses the standard cues like weaving in a lane, estimating 75% of DUI offenders display at least one of the standard detection cues, and he also uses a lot of moving radar and makes stops for speeding. He reports not all the officers in Topeka are trained on detection cues. However, they are trying to catch new officers coming into recruit school and to train them with at least an 8 hour mini-training course during "DUI detection day," where the officers are given instruction, and watch videotapes to train them in detecting and handling DUI suspects.

When asked about observing specific detection cues which might relate to certain "groups" of DUIs (age, sex, vehicle type), the officer contacted had never thought about if certain detection cues were prevalent for particular groups of drinking drivers. He thought possibly the older drivers who might have drinking problems might drive slower and seem to be overly cautious. He thinks most officers look for signs of alcohol or drug involvement at crash scenes, or at least they are "getting more officers aware" with the BAT van.

When they first got the BAT van, there was cynicism because officers thought processing DUIs was too much work. Now there are officers making DUI arrests that he thought would not make those kinds of arrests, because they can call for the BAT van. This means the traffic officers can take over DUI arrests at the scene, at another officer's request, or at least can offer substantial assistance in processing DUI suspects. The reason the BAT van officers are permitted to become so involved is to allow more officers to make DUI stops and then get back out on the street without the long processing time required for DUI suspects. Those officers do not have to complete all of the paperwork that they are not familiar with, etc. and arrests have increased because the other patrol officers are utilizing the BAT van more. They had approximately 100 more DUI arrests last year than the previous year, even though the number of officers in the traffic unit had been cut.

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There is no set DUI probable cause threshold when a DUI suspect would be pulled over (e.g., certain number of detection cues, length of time following a vehicle); it is up to the officer's discretion.

Enforcement and Apprehension. There is a three year grant, now half over, that supplies a mobile BAT unit. The unit is a full-size windowless, cargo-type Chevrolet van equipped with a video camera, and a BAT as well as standard red lights, siren and radio. The van is in operation 6 days a week; normally Monday through Saturday. The van is on patrol and also backs up the other police officers if a DUI suspect is stopped. There are two other BATs in two DUI rooms at police headquarters which can also be used for breath testing. There are six motorcycles available for traffic enforcement, but these are typically not used for DUI enforcement. Topeka does not have computers in patrol cars yet. They have two video cameras; one in the BAT van and one in an enforcement unit. If possible, officers will tape a DUI suspect's driving before the stop.

Two anti-DUI officers, one of them usually in the BAT van, work from 8:30 p.m.-4:30 a.m. Another unit is also on DUI patrol, typically from 10:30 p.m. - 6:30 a.m. They believe these are the best hours to arrest DUIs. The taverns and bars close around 2:00 a.m. They mostly use roving enforcement, often around the tavern areas or areas of frequent crashes. Sometimes, stationary surveillance is used around the tavern areas. They also have an anti-crime team (ACT) and SCAT (street crime unit) which mainly deal with drug enforcement. Apparently, these units have more police officers while traffic resources have been cut "considerably" during the last couple of years. When ACT and SCAT set up driver license check lanes, the officers look for DUIs as well. There have been one to two check lanes a month, less during the winter months. Check lanes may be set up any night of the week, and sometimes they have found mid-week is productive. When check lanes are set up, it is required that notice be posted 8 or 16 hours in advance. The media are not notified directly; but the notice is posted in a public access area at police headquarters, so anyone could come in and find out potential check lane locations.

If an officer starts a pursuit, the officer must call in the violation or reason for the pursuit, where the pursuit has started, and must call for a helicopter. One other unit, the closest one available to the pursuing officer may assist with the chase until a helicopter takes over. If a helicopter is available and responds, the pursuing officers must break off pursuit once the helicopter has located the fleeing vehicle. The helicopter will continue the chase and call in the location of the vehicle. The pursuing officers will continue to follow, but at a distance.

This policy was developed in hopes that once the patrol cars have stopped the pursuit, the suspect will slow down and not be a hazard to public safety. If a helicopter is not available, only the two units described above are allowed to run with lights and siren; again, this is to reduce the chances of crashes. Other units may enter the area on a

non-emergency status to assist, but cannot pursue unless given authorization by a supervisor to run lights and siren.

Field Investigation. The policy for Topeka police officers is to call in all traffic stops with the vehicle description and location. When approaching the vehicle, the officer will ask the driver for a driver's license, noting how the person retrieves the license (if the person passes over it or fumbles). Then the person will be asked to recite his or her current address so the officer can listen for slurred speech or smell the odor of alcohol, if that hasn't already been detected. The officer will look at the person's eyes for signs and will generally watch how the person responds. The suspect will be informed as to why the stop was made (e.g., speeding, weaving) and might be asked if he or she had been drinking that evening. The officer we contacted reported the usual response is two beers, or the person had something earlier in the evening, or that the person had not been drinking.

Depending on how the person has reacted, the officer may ask the person to remove the keys and step out of the vehicle at that point, or may wait for the backup unit to arrive. There are portable breath testing units available for officers to check out. The officer might do a horizontal gaze nystagmus on the person while the person is sitting in the vehicle, or later during other field sobriety tests. The officers also use a one leg stand test, and a walk and turn test. If the BAT van is on the scene, the field sobriety tests will be videotaped; if not, the field sobriety tests might be conducted without taping. The suspect would then be taken to police headquarters where there are video cameras and the tests might be conducted again while taping.

*Arrest and Transport Violator / Post Arrest Investigation and Processing*⁷. The suspect is arrested, patted down, and handcuffed at the scene "99% of the time." Department policy is to handcuff before transporting. This is important in the BAT van due to close quarters, but is also done when transporting in a patrol car with a cage where the person is handcuffed, placed in the back, seat belted and transported to headquarters. If a suspect is combative, a unit with a cage will be used and the person would be transported directly to jail.

When a patrol officer calls for the BAT van, it would depend upon the officer's experience in making a DUI arrest whether that officer would conduct the field sobriety tests, place the person under arrest and begin the necessary paperwork, or wait for the BAT van and have the DUI traffic officers take over the entire procedure including the arrest. If the BAT van is on the scene, the suspect is breath tested at the scene using the BAT. Otherwise, the suspect is breath tested at police headquarters using one of the other BATs located there. During a checkpoint, the only procedural

⁷ In Topeka, the post arrest investigation and processing are sometimes done in the field with the BAT van and sometimes at police headquarters, so these sections have been combined.

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processing difference is there would be no driving violations, but the same field sobriety tests are conducted, etc.

After the person is arrested and placed in the BAT van or taken to headquarters, an implied consent advisory form is read. The person's Miranda rights are always read before the intoxication report because of the questions asked on that report (e.g., were you operating the vehicle, where were you going, where were you coming from, have you been drinking, how much, are you a diabetic?). A DUI report is also completed at some point and an arrest report.

If the processing of the suspect has been done in the field (as opposed to at police headquarters), then the suspect is transported directly to the Department of Corrections (which is a county jail, separate from police headquarters). If the person fails the breath test and requests a blood test, the person will be taken to a hospital and then to jail.

Release procedures vary, but if the arrestee can get a signature bond, he or she can call someone who is at least 18, has a valid driver's license, and has not been drinking. That person must report to police headquarters and sign a form to take custody of the arrestee and must agree to watch the individual for six hours during which time that individual will not allow the arrestee to drive or be out in public. If the person who has taken custody of the arrestee cannot control him or her, it is that person's responsibility to call police and report that the arrestee is out; if the police find and arrest the person again, he or she is taken to jail and will not get out until an appearance is made before a judge. If there is no one available to take custody of the person, then there is at least a six hour hold, after which time the person is released on his or her own recognizance if a cash bond is not required.

Passengers are usually not interviewed unless, for example, the driver does not have a license with him or her; then the officer might ask the passenger what the driver's name is and other information to verify the driver's statements. The vehicle would be checked for open containers. In a crash, witnesses would be interviewed and asked what they saw along with their name, address, and telephone number. In a fatality, injury or major crash, officers will attempt to get written statements from witnesses either at the scene or the next day.

A DUI arrestee is asked for permission for a police officer to legally park and lock the vehicle. The keys are normally returned to the arrestee and are kept with his or her possessions. If the person will not give permission to park the vehicle, a "non-preference" wrecker will be called and the vehicle will be towed.

Reporting forms to be filled out on a "typical" DUI arrest for city charges are: a DUI intoxication report, breath test protocol, the card from the BAT, entry in a DUI log, arrest report and supplement report, one or more tickets (e.g., speeding, DUI, driver

license violation). If state charges are being filed, then an offense report and supplement report would have to be completed. If there are felony charges (third DUI) then state charges would have to be filed. An NCIC check would have been run to check for any wanted charges and a driver license search to check if the license is valid; the dispatcher would let the officer know if any previous DUI charges are on the record. If prior charges are discovered at a later date, the charges can be amended from city to state. In those cases, the District Attorney will drop the city charges and file state charges.

The implied consent forms have a checklist which provides the date of the stop, reason for the stop, and if the driver license was valid at that time. The arrestee gets a copy of the form which serves as a temporary driver's license for 30 days. If the person wants to request a hearing, there are instructions on the back of the form and a perforated bottom section, which can be torn off, completed and mailed to the Department of Motor Vehicles to request a hearing. The person has 10 days if they hand-carry the form to the DMV, and 13 days if the form is mailed, in which to request a hearing; otherwise 30 days after the stop, the driver's license is automatically suspended.

There are three copies to the notice of suspension, the violator gets one, the other two are turned in by the officers to the traffic division secretary who sends in all the paperwork to the DMV.

Arrest and Processing Time. As far as processing paperwork, before implied consent, a DUI offender would require approximately an hour of an officer's time; after implied consent, the time required jumped to 2 hours, but currently approximately 90 minutes is required to process an average DUI offender.

Prosecution Support. The Department of Corrections has a schedule of court dates and they set up the date with the arrestee for the preliminary hearing or the plea days. The officer contacted was not certain, but thought the time frame might be a month or so and could be several months (especially if going to trial). If a case goes to municipal court, the officers might meet with prosecutors beforehand to discuss the case, but usually only if there was a serious crash. If a case goes to trial, which is not often, then officers are most likely asked to testify as to probable cause for the stop, field testing, reliability of equipment, and the videotapes are shown. Whichever officers had been involved would testify, and reportedly most officers do a good job. It is mandatory for officers to show up at any court proceedings for any arrests. Most driver license hearings last 15 minutes, but one defense attorney in Topeka brings in a court reporter and he has kept officers as long as 1 ½ - 2 hours. Implied consent hearings and administrative hearings both take place at the Department of Motor Vehicles. A driver's license might be suspended with the case going to trial in

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municipal or district court, but even if the person charged wins the case, the license could still be suspended by the administrative hearing.

Handling Juvenile Cases. The arrest procedures are the same for juveniles, but instead of taking them to jail or a juvenile facility, police will attempt to contact the parents, the juveniles will be released to the parents' custody and then they will have to set up their court date. If the juvenile is to be incarcerated, the person interviewed was uncertain, but thinks he or she is first transported to a hospital to make certain there is no danger of overdose on the amount of alcohol consumed, and that the juvenile is given a clean bill of health, after which the juvenile is transported to the youth center.

The city court handles very few juveniles, even though technically they can handle anyone over 14 years of age in the city. They have a problem of what to do with juveniles if convicted because the city has to pay to house any child in the youth center which costs over \$200 a day. Ninety percent of juveniles arrested for DUI end up going through the District Attorney's office. Most juveniles the city gets are diversion eligible and they enter the diversion program. Most juveniles arrested for DUI are 18-21 years of age and are only charged with the DUI and not other charges in addition to the DUI such as underage drinking. This is one of the city prosecutor's "pet peeves" because the officers think the DUI is the most serious charge they can make, so why file other charges; but if there are other charges filed, it gives him more ways to negotiate. (The prosecutor heard right before the interview that the "zero tolerance" law for juveniles - under 21 years of age - passed at 0.02.)

Charging Process. We had two contacts with prosecutors in Topeka, one with a city prosecutor and the other with a county prosecutor who handles DUI charges for the state.

The city prosecutor tries between 1,200-1,400 DUI cases a year; he (the city) gets the generic DUI (someone is speeding, gets pulled over, crashes). The county gets felony DUIs (2nd or 3rd conviction, or felony driving while license suspended, drugs in the car). DUIs are "the biggest single thing they do in the city." The prosecutor has been prosecuting in that office for five years and there has always been a policy not to reduce DUI charges; Kansas has a prohibition against plea bargaining DUIs. If they have a case bad enough that they are considering amending it, they will dismiss it. And they have one of the lowest DUI dismissal rates in the state (5%). Normally the offenders plead guilty to the DUI, it is taken to trial or the DUI charge is dismissed. They don't amend to reckless driving, and if they tried, the judge there would not allow it. Last year (1995) he thinks they had over 400 diversions, and about the same number of convictions. He reports a significant number of people never make it to court but go out on warrant and are not resolved, but of the cases handled, approximately 85% plead guilty or go to diversion, a small percent get dismissed and a small percent are found not guilty at trial.

Every once in a while there is a bad case; periodically, there is a technical fault where the officer or someone involved “screwed it up” (did not provide the implied consent advisory, the machine was not working properly). They’ve had a few cases where officers think the person is DUI following a crash because they smell alcohol, the officers write it as a DUI, and when the tests come back (which could take a month because blood tests are run by the Kansas Bureau of Investigations), there is no proof of impaired driving. Or there was a crash which was not the fault of the person suspected of being under the influence (example given was someone being rear ended while sitting at a stop sign), the person refuses a breath test and does not do field sobriety tests, so there is no case against them. A case like that they would likely take to trial, but that is the type of case they might lose.

State (actually county) versus city charges depend on if the offender is charged under state statute versus city ordinance; most city ordinances in Topeka mirror the state statute verbatim. A third DUI in 5 years could be enhanced to a felony charge which would be a state charge; city would only be doing misdemeanors. When it comes to a DUI, an officer in the field has to make a relatively quick decision as to if it will be a state or city charge, and this decision can be based on faulty information. They must rely on information from dispatch which relies on coded information from a computer for motor vehicle records which might not be up-to-date. Also, if the person at dispatch is not proficient in reading the coded information, errors could be made. And, an out of state DUI might not be detected until later.

If the city prosecutor discovers after receiving the case that it should be a felony charge, it could be sent to the state’s prosecutor, but there are also times when the city prosecutor would prosecute a third time DUI offender; just because a felony charge is not brought, it does not mean the person will not be doing significant (jail) time. “You can argue the statute and how it should be interpreted, but if it’s charged as a misdemeanor and at sentencing, it’s found to be the third offense, the courts cannot call it a felony.” The penalties for second and third DUI offenses are very similar in Kansas; an argument can be made that the mandatory minimum for a third offense be imposed even though it is a misdemeanor charge. It will not go on the person’s record as a felony, but an argument could be made that the judge has to impose the minimum based on a third time offense.

And there are some economics involved, too. In Topeka there is no city jail; so, anytime someone is sent to jail, the city pays for it. There is now a house arrest program, which is “excellent” and also it generates money; the offender pays for the program. So sometimes the decision as to where to prosecute is made based on economics. Shawnee County does not have a house arrest program, so felony offenders go to jail. Sometimes, if the facts on a case look like he could lose, and in his mind, he thinks the client is deserving, the county attorney will dismiss and ship the case over to the city with the understanding that the offender will plead guilty

there and be put on house arrest. That way the case is not lost and the offender does not lose a job.

DUI charges are not reduced because Kansas statute does not allow it; prosecutors can only go forward with a DUI charge or dismiss it. Other charges filed with a DUI can be dismissed for a plea of DUI. "Given a defendant doesn't run" the time from arrest to charging would be from 1-3 months in county court. That's the time it takes to do the background check and get the person charged. If it's a misdemeanor charge, a summons will be issued; if a felony, a warrant for the person is issued. If the person has not run, he or she will typically be picked up fairly quickly. The summons will go to their address and they will have an appearance in 30-60 days (usually 30). The person will be given another 2 weeks if they need to get an attorney. A trial date will be set for about 2 months after the appearance date. Sometimes "for a dead bang loser" an attorney will continue it once just to drag it out a little bit. If they have a defense, the attorney will get a little more involved. If there is a test result, they will probably file a motion to suppress. There would be an evidentiary hearing on that separate from the trial. So pick-up date (arrest) to conviction date might be nine months in a county case. A small percentage flee, but those are usually individuals with problems other than DUIs. Arraignments are done in the court involved (either city or district).

Topeka has a DUI diversion program. For a person to qualify there could be no crash involving injury, the person must have been properly licensed and insured at the time of arrest, no prior DUI diversion, no prior drug conviction. The Alcohol Safety Action Project (a function of Kansas court services) identified as ASAP does the interviews for the offenders; the requirements are "black and white" and ASAP makes the call unless they have one that is close; then they will ask for the prosecutor's opinion. The diversion itself is for a 12 month period. There are standard conditions; special conditions can be added based upon the facts of a particular case. (Alcohol education is always required, sometimes inpatient and outpatient treatment and AA meetings are involved.) The person's licensed driving privileges are restricted by the state.

Arraignment. The city prosecutor reports pretrial motions on a generic DUI are rarely filed (he estimates only about 15 a year). If filed, they are mostly motions to suppress for lack of probable cause to pull the vehicle over, or no probable cause to place the individual under arrest for DUI after being pulled over (e.g., the officer had no reason to think the person was drinking, so should not have asked the person to perform the field sobriety tests). Periodically they receive motions to suppress based on defects in the breath testing machine which are "very rarely, if ever, successful." Also, periodically, they will receive motions claiming that the arresting officer did not supply the person with the proper paperwork (few and far between). The city prosecutor estimates 20% of persons arrested for DUI are represented by counsel. The average DUI individual will prefer to handle it on their own and save money;

they are not required to have council. There are 10-15 attorneys in Topeka who handle 90% of the DUI cases.

Trial. Of the small percentage of DUI cases that go to trial, the city prosecutor estimates approximately 40% plead guilty right before the trial when they discover all the paperwork is in order and the police officers are present. Certain attorneys will use a municipal court trial as a sort of discovery trial. If they lose in municipal court they have the right within 10 days to appeal to district court for a new trial (a trial *de novo*). The attorneys use municipal court, where there are no juries, to find out all the facts and then hope they can win the case in district court in front of a jury. A couple of attorneys in Topeka do this, but it is rare in DUI cases.

The county prosecutor reports a high percentage plead guilty to DUI (approximately 80-85%), 5-10% try and 5% he does something with (decides it is a weak case and dismisses; decides he could lose at trial and the person does not really qualify for diversion, but he does not want to lose the person so he sends him or her to diversion; or he sends the case over to the city). A high percentage plead guilty because the police do a good job. He files cases where he knows there are problems with the case, but he believes the person was driving under the influence, and the case won't often be challenged.

After an individual is arrested for DUI in Topeka and taken to jail (and they all go to jail), that person is given a court date to appear (always on a Tuesday morning for city court) before being released. Those who come (and he reports a lot do not show up) must see the judge for a short arraignment. The judge talks with each person individually and asks if he or she understands the DUI charge and asks if the person agrees with the charge. If the person agrees, that person is told to report to the probation department for an evaluation to determine if that person is eligible for the diversion program. The person returns to court at a later date and will either enter the diversion program or will be sentenced. A certain number of people will walk in and say they want to retain an attorney; the judge will give them a new date to appear (about 30 days). They and/or the attorneys must appear at the new date; a certain number of people charged with DUI send their attorneys in their place. The judge sets all of the trials in an effort to efficiently use trial time. This is done so that the judge can question all parties to make sure the prosecutor's office has been contacted first to try and work out some arrangement. After these efforts have been exhausted, a trial date will be set.

Elements of Offense. The city prosecutor reports they have good police officers working drunk driving cases. His elements of offense (other than positive BAC and he reports not many fight a positive BAC) are field sobriety tests (e.g., were they asked to perform field sobriety, were they orderly, how did the person appear?). Officers are told the more field sobriety tests they give, the better; the more

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ammunition for the prosecutor. The prosecutor reviews the offense report on cases going to trial and on those cases where he is contacted by attorneys. Police officers complete a lengthy offense report and this is the one element the prosecutor refers to heavily; time does not permit reviewing all of the paperwork on every case) Videotapes have been used, in the past, mostly in the DUI room which might include field sobriety tests. Videotapes are usually only used if the case goes to trial; most defense attorneys don't care if they are used. Defense attorneys rarely argue probable cause for lower BACs. If someone blows an 0.08, the attorney will come before the judge and try to argue there could have been a deviation. The prosecutor reports the judge will not allow this, the legislature says 0.08 or above and the judge will not deviate. Also, he reports the police officer we contacted is very good at testifying, and this officer gives the person the benefit of the doubt when he sets up the machine.

The county prosecutor reports elements of a successful offense other than positive BAC are positive ID (person has to have been driving), the person has to have been under the influence of alcohol to a degree that he or she was driving unsafely or a positive BAC 0.08 or higher, and the person had to have been driving in Shawnee County, Kansas. If there is a breath test, the testing officer must testify in court. If he knows the officer and the officer has testified before, the prosecutor only asks the officer a couple of questions right before the trial date. If there was a fatality, he will have talked with the officers more often and will be more familiar with the case. Other than that, it is the same foundational questions over and over again. His case load is too heavy and does not allow much time to review and prepare. He handles vehicular homicides, driving while suspended felony cases, driving while habitual felony cases, car stops involving drugs and DUIs. He will handle 400-500 DUI cases alone in 1996 and there are more of the other types of cases. He uses a couple of legal interns to assist, but is responsible for all of the cases.

Elements Contested. Most of the cases which go to trial in city court involve DUIs where there is no breath test (refusals). The cases then revolve around whether field sobriety tests were given, claims of prior injuries so the person could not perform field sobriety tests, sometimes weather conditions, traffic, distractions, etc. Attorneys will argue all of these points. And then there are individuals who have refused to do anything, and the defense attorney will argue there is no evidence of impairment. The prosecutor reports he wins more often than he loses on these cases, but he does lose his "fair share." It kind of depends on the individual; even though they refused the breath test, a lot of these people were caught driving down the middle of the road, straddling both lanes, or a multitude of other things that can be used against them. He estimates he wins 60% of these types of cases and loses 40%. Luckily these cases are few and far between, most people take the breath test, or at least the field sobriety tests.

Elements of a trial likely to be contested in county court are, when a person refused any test, the defense attorney will argue the client was not under the influence. If there was a test, then the test is likely to be contested; whether it should be admitted and its accuracy. For the lower BACs, he reports the better defense attorneys will argue the accuracy of the machine because it has a 5/1000 margin of error. Hopefully, on those cases there is “some good driver action” (where officers can testify that the driver was not in control.) But generally there was a driver who was stopped for speeding and then was found to be under the influence. Generally only KHP (Kansas Highway Patrol) officers can provide video tape of field sobriety tests because they are the only ones with cameras in all of their cars. For a bench trial, a video is not that important, but a jury has a different view.

Appeal. Defendants have 10 days from the date of sentencing to appeal Municipal Court convictions. Within 10 days they have to file notice with the district court of whatever county they are in, and must pay the \$59 filing fee. Then the case starts from scratch in District Court which is part of a state-wide court system, where they are arraigned and they can have a jury trial (again, jury trials are not possible in Municipal Court). The city prosecutor reports this does not happen often; he estimates about 25 cases a year are appealed (this small number includes all types of cases, not just DUIs). There are no issues involved because it is a brand new trial and everything starts over again.

Appeals in county court must be filed within 10-20 days; most attorneys there are looking for an appeal bond so their clients will not go to jail. Double Jeopardy has also been used to appeal recently.

Sanctions - Judicial. There are not prescribed sanctions for different BAC levels in Kansas, but rather the person’s history is factored in (e.g., number of prior DUI offenses). Municipal courts operate under the Kansas statutes which give the maximum penalties a first, second, third, etc. offender can receive. There are parameters they must stay within, but no charts.

In Kansas district courts, for felonies, there are sentencing guidelines. DUIs are “off grid” when it comes to felonies; meaning sentencing guidelines are not followed. That is a plus because DUI felonies are “low-level” felonies, and none of these people would go to jail if the sentencing guidelines were followed; that’s why DUIs were moved off grid. Offenders have to go to jail for a minimum of 90 days. On the misdemeanor DUIs (first and second offenses), there are statutory minimums as well, but that has nothing to do with sentencing guidelines. On the first offense, 48 hours up to a maximum 6 months; second is, by statute, “minimum 90 days paroled to five after the person becomes enrolled in treatment,” and maximum of one year. The county prosecutor reports second time offenders get five days; judges “are pretty good about not just rubber stamping the minimum and letting them go.” On first

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time offenders, the minimums are imposed 98% of the time, unless the person had a prior DUI six years before and another six years before that (DUIs stay on the record 5 years). Again, most of the first time DUIs divert, and those that don't, do the minimum time.

On second offenses, the judges in Topeka look at the offender's history, and the recommendations of the pre-sentence investigation rider. State statute requires that a pre-sentence investigation report be done and provided to the court; DUI is the only misdemeanor for which this report is a requirement. The judge peruses this report and then makes a recommendation. For all other misdemeanors in Kansas except for DUI, sentencing is immediate. Reportedly, judges also do a good job of not rubber stamping a third offense, although that carries a "pretty good penalty" already, 90 days jail. Most judges will impose the maximum and then entertain motions to modify after 90 days.

There is no house arrest program planned for Shawnee County. The county prosecutor does not like house arrest, he favors a work release jail program but that would cost the taxpayers and the county money and he knows they won't spend money on it. He is in favor of work release because he believes DUI, more than any other crime, cuts across the socio-economic groups and there are a lot of employed people with good jobs who get DUIs.

House arrest was implemented by the main DUI judge in the municipal court. Second and third offenders who are facing significant amounts of jail time may be eligible for house arrest if they are employed, or are full-time students, or are primary care givers. These individuals must have a telephone, be able to pay for the program, etc. They are sentenced to serve 2-5 days in jail, they immediately must report to probation (located in city hall) and they must provide probation with a copy of their work schedule. They are hooked up to a monitoring machine on their telephone which has a video camera and a breath tester. The person is called between 2-5 times every night (or day depending upon their schedule). They must stand in front of the machine, blow into the machine which registers if they have any alcohol on their breath.

Probation personnel can confirm the person's identity by the video camera. If alcohol registers on the person's breath, the judge will have the person picked up and brought into municipal court. Sometimes the judge will send the person back to jail, sometimes not. The prosecutor reports it is a good program but at times it gets abused. Part of the reason it was set up was to cut the costs the city had to pay to house DUI offenders in jail (over \$70 per offender per day). The city prosecutor does not agree with the use of house arrest in some cases because he believes some of these people are so chronic they need to be in jail. But the judge makes the final decision on who gets house arrest and who goes to jail. Juveniles probably would be

treated the same, but he does not ever recall having a juvenile second or third offender.

Any conviction or diversion information is sent by municipal court staff to KBI and the KDOT (for driving record purposes), and the municipal court keeps its own records.

When asked if treatment is ever used as a sanction, the city prosecutor replied not as a sanction, but as a requirement. On a second offender, it is mandatory the individual receives either inpatient or outpatient treatment from a certified alcohol treatment agency. If they do not comply, their driving privileges are suspended until they do comply. Also, the person's probation can be revoked and they can go to jail. The probation department is responsible for tracking compliance; they send a letter to the state which immediately suspends the license and notifies the prosecutor who files a motion to revoke probation or diversion. On a third offense, the person is required to go into treatment and it is a violation of probation if he or she does not comply.

Sanctions - Administrative. Prosecutors do not get involved with license issues but apparently for a first time DUI offense, the person loses the license for 30 days and then it is restricted for 330 days following that (to and from work, to court, to alcohol school, etc.). Persons who refuse the breath test lose their license automatically for one year as do second and third offenders. The city prosecutor believes 90% of administrative hearings result in the suspension being upheld.

Comments. The city prosecutor believes their process works fairly well, although he is overwhelmed with work. He handles 35,000-40,000 tickets a year (mostly speeding) including the 1,200-1,300 DUIs. There are two full-time prosecutors, but he is the only one to go to court. The prosecutor is in court almost all day every day. They have two part-time law school interns.

The county prosecutor does not think people realize the volume of DUI cases. He said a decision must be made on what issues to enforce; there is not enough "people power" to enforce everything. He feels overwhelmed with the volume and he knows other prosecutors who are overwhelmed. He would keep the level of DUI enforcement up; however, people don't realize the judicial system is bursting at the seams. Some sort of planning or advisory counsel beforehand might reduce this problem. His view of prosecution is that they should slow down a little and make sure they do it right as opposed to weeding through a multitude of cases to find the few which can be successfully prosecuted.

Topeka police anti-DUI officers say they are working to broaden the training of the other officers, many of whom have been required to ride in the BAT van for 8-24 hours to gain experience and exposure to the van and the equipment. The officer we

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contacted feels confident that not many of their DUI cases are being plea bargained or dropped. When an officer does find out that a case has been dropped, memos are written to the administration to point out what has happened.

WICHITA, KANSAS

Department Size. There are approximately 635 officers in Wichita; this includes eight dedicated DUI motorcycle officers.

State Laws. BAC limits are 0.08 in Kansas.

Training. The officers are trained in detection of the “20 validated clues” (nighttime DUI cues) sanctioned by NHTSA.

Enforcement. The eight dedicated DUI motorcycle officers generally saturate certain areas which are known hot spots on given nights. General patrol officers are also considered active in DUI enforcement but they stay within their beat areas, whereas the dedicated DUI enforcement officers can go anywhere. Usually the dedicated DUI enforcement officers are stationary and often run radar; each officer usually works alone and radios for backup when needed. Checkpoints are conducted occasionally and are usually done in conjunction with KHP (Kansas Highway Patrol). Wichita recently received grant money and purchased video cameras for patrol cars and for the BAT van, and possibly another BAT. There are currently four BAT vans.

Regular patrol officers wait for a very distinct violation of city ordinance before stopping a vehicle; a lot of the DUIs come from the motorcycle officers who are sitting still and running radar. Normally the first indication that a driver may be impaired is personal contact. But in route to their position, they will sometimes follow drivers who might display subtle clues, such as drifting within a lane, slight weaving, in which case the officer would follow the individual until they observe a violation and then stop the vehicle.

There are traffic investigation officers who investigate crash scenes and are very observant as to possible alcohol and drug involvement. If they have any questions as to driver involvement with alcohol, they call out one of the eight dedicated DUI officers.

Apprehension. Regarding pursuit, if a driver is suspected of DUI, the officer will call in to receive permission from a lieutenant or a supervisor to continue pursuit unless the pursuit becomes reckless or dangerous. Departmental policy is “a lot more liberal” when pursuing a DUI suspect than for a general traffic infraction. Basically, motorcycle officers have a no pursuit policy unless DUI is suspected, and then the motorcycle officer must break off pursuit once a four wheel police vehicle has picked up the suspect. After that, only two marked police units and a supervisor (maximum of three units) may pursue a DUI suspect. Additional information is gathered during the pursuit and now that the radar cars have video cameras, the cameras could be an additional help in recording the pursuit. The video cameras must be switched on

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manually. Department policy is that video cameras are used on all DUIs, all pursuits, and anything else that the officer deems necessary to document.

Department policy on stopping a vehicle is that dispatch is notified either before a vehicle is stopped or sometimes after a vehicle is pulled over. If an officer sees a car where the driver is obviously impaired, the officer will continually call in until the vehicle is stopped; that way a backup unit will already be in route before contact is made with the driver. Normally, however, the officer does not wait for backup to arrive before approaching the driver.

Field Investigation. Initially upon approaching the vehicle, the officer will address the driver and request a driver's license and observe how the individual moves to respond to that request. Often, officers pose a divided attention question at that point to see how the individual comprehends responding to two requests. Sometimes, the officer will ask an unusual question which would make the individual stop and think, giving the officer an opportunity to observe the individual's behavior. Other signs include chewing gum, smoking a lot of cigarettes, etc. The officer normally asks the person if he or she has been drinking and a typical response is "yea, I had two beers." The person would be asked when he or she finished the last drink. The length of time from the last drink is important if the officer decides to administer a PBT. If the person says the last drink was consumed within the past half hour, or if there is alcohol in the vehicle, the officer will start a fifteen minute deprivation period. If the person says he or she did not have anything to drink that day or within 2 hours, the PBT manual states that the test may be administered immediately.

The PBTs used in Wichita have green, yellow and red lights. The officer says if he gets a red light immediately possibly indicating mouth alcohol, he might decide to begin a 15 minute deprivation period and then administer a second PBT. If he suspects the individual is impaired, he would ask the person to exit from the vehicle. The officer we contacted said he would not typically wait for backup to arrive. The officer believes the eyes are a key indicator of alcohol consumption and would typically administer horizontal gaze nystagmus. However, if the person is wearing hard contact lenses, departmental policy is not to administer the horizontal gaze nystagmus evaluation, because the contacts could pop out. He would question the person about any physical impairments, check the person's foot ware and then administer the field sobriety tests.

If a video camera is available, the field sobriety tests are taped. Usually, however, the officer has completed the field sobriety tests before a backup officer arrives (a witness for the field sobriety tests is not required). Officers are trained to conduct three standardized NHTSA field sobriety tests "in the correct order: HGN, walk-turn and one-leg stand." Reportedly the only time officers deviate from this is for obvious reasons such as when there has been a crash or the person is handicapped. Officers

state in their report why they have deviated. Other tests they can give include the divided attention test.

Arrest and Transport Violator. A suspect is arrested at the scene and a call is placed for a BAT van. The vans try to respond first to motorcycle officers because those officers have no means to transport DUI suspects. If a BAT van is not available, an alternative is to have a beat officer transport the individual to the county jail where a BAT is set up. Most of the dedicated DUI officers are certified BAT operators. Or, a beat officer can be asked to transport suspects to a BAT van, when the van is at another DUI scene. The arresting officer stays with the individual for a 20 minute deprivation period prior to administering a breath test, or the officer will be nearby if the BAT van operator is handling the 20 minute deprivation period.

The arresting officer will provide the person with the implied consent advisory form and will read it to the person. The officer “Miranda-izes” the individual after the breath test. The reason for reading the Miranda warning after the breath test is that it states the person has the right to an attorney. The implied consent advisory form states the person does not have the constitutional right to talk with an attorney. The officers try to keep the confusion down by stating the person does not have the right to talk with an attorney during the test; then after the person has been given the opportunity to take a test, the person is then read the Miranda rights which states they have the right to talk to an attorney.

If the individual blows a 0.08 or higher, the officer completes the suspension notice for the driver license and serves the individual a copy. The suspect is then released to the BAT van operator along with all of the paperwork. The suspect is then taken down to the county jail where the booking procedure is completed. The arresting officer is **not** responsible for the preliminary offense report, the arrest report, turning in any alcohol evidence, or booking the suspect into the jail. The arresting officer is responsible for turning in any guns taken during the vehicle stop and completing the driver’s suspension form and for a taped report and an alcohol influence report (a standardized checklist form which has the three standardized field sobriety tests, and a series of standard questions under Miranda).

Ninety-five percent of the time, the suspect’s vehicle is towed and impounded. At the officer’s discretion and with the vehicle owner’s permission, the care and custody of the vehicle can be released to another individual on the scene who has not been drinking. The vehicle is never just left at the scene.

Post Arrest Investigation and Processing. Typically the post arrest investigation and processing take place at a BAT van or at the county jail (see section above, *Arrest and Transport Violator*). For a homicide or serious injury crash, field sobriety tests may be administered again at the county jail and videotaped. Also, if the individual

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seemed impaired, but did not have a high BAC reading, officers may call in a drug recognition expert (DRE). Sedgwick County has a policy where everyone is held for a minimum of two hours and are not released until they have a means to get home (someone comes to pick them up, a cab is called). Normally, witnesses or passengers are contacted only at a crash scene. In addition, if someone calls in to report a DUI, and wants to be contacted, that person will be called back.

Arrest and Processing Time. It typically takes an officer between 50-75 minutes to process a DUI arrest.

Prosecution Support. A small percentage of DUI cases actually go to trial. Officers have limited discussions with the prosecution prior to trials. Newer officers, although trained in DUI detection and arrest procedures, are told to make sure they contact prosecutors before a trial and let them know they have limited experience testifying at DUI trials. The eight dedicated DUI officers normally only talk with the prosecutor for a couple of minutes on the side beforehand to go over a few specific details, normally at the end of the pretrial conference. The city attorney prosecutes DUI cases.

Major issues which involve the police officers at trial include probable cause for the stop, a full 20 minute deprivation period before the BAC test (otherwise must try to go with impaired statute which is harder to prove), and how the field sobriety tests were conducted. However, it seems like defense attorneys are running out of issues and are trying to create new ones by subpoenaing everything so that if something does not show up, they have a motion to dismiss. For example, the officer's field notebook may be subpoenaed in which the officer may or may not have made notes regarding the DUI stop. They have even subpoenaed the records custodian in training so that if that person does not show, they can move to dismiss. The BAT log, video log and all of the paperwork related to the case are often subpoenaed. When an officer must appear at a trial, it usually requires 2-3 hours time, most of that time waiting to appear.

Officers do testify at Driver License hearings, and the officer contacted reports "this is the biggest sore spot in DUI enforcement." Defense attorneys and defendants use the hearings as a fact finding mission to learn of any weaker points of the case. They sometimes know they will not get the driver license returned and admit they are only on a fact finding mission for the trial. Other times, if defense attorneys subpoena enough items, something may be missing, or an officer will forget to bring a report, and then the suspect gets the license back. If everything is in order, the hearing turns into "a one-sided trial" because there is no one on the officer's side and the defense attorney can ask all of the questions and find out details of the case.

Many individuals ask for a hearing (on the Thursday following this contact, he had 11 hearings he had to attend). The officer we contacted says based on the DUI

arrests he makes, 25% request an administrative license hearing. Officers used to have to spend the day at hearings, but the hearings must now start on time and so often officers now spend 2-3 hours. The BAT van operator (or whoever ran the BAT) must also attend the administrative hearings.

The prosecutor we later contacted also spoke of defense attorneys using these hearings as “a big discovery tool.” He believes most of the hearings are scheduled to find out the evidence or to hope that the police officers will not show up and that the hearing will not be continued but dismissed, because that is typically the only way a person gets back a driver’s license (charges against the person are still pending). The city prosecutor’s office would not get involved in driver’s license administration hearings except to review the transcripts from the hearings, because the defense will often use the findings in court.

One city prosecutor handles first-time offender DUI cases. Most of these individuals, if they have no other alcohol-related offenses in Kansas or any other state, have not been involved in an injury-related or fatal crash, and have not shown an extremely high BAC (e.g., 0.25), are eligible for a diversion program. Offenders are assessed either by the probation department or other certified private alcohol counseling groups within the city where individuals are permitted to receive an assessment. Normally each first-time offender would have to attend the WIP (Wichita Intervention Program) which is a weekend intervention program. After that point, he or she might go into alcohol treatment if WIP personnel recommend treatment. The WIP weekend takes care of the 48 hours the person would typically have to serve for a DUI conviction.

Another city prosecutor handles multiple offender DUI cases. He reports the system has been changed in Wichita to a “case review system” meaning each case is checked for technicalities and then is sent on to a pretrial conference. The pretrial conference is a short meeting attended by the prosecutor, the defense attorney, and the defendant, unless the defendant has authorized the defense attorney to make a plea. Pretrial conferences have been ordered by the judges in Wichita (for all defendants, not just DUI cases). In theory the pretrial conference gives the prosecutor a second chance to review the case, especially the technical portions which may pose problems at trial. However, since the pretrial conference process has been put in place, the period of time until a case might go to trial has been lengthened and has even resulted in motions to dismiss for lack of time. At the time of this contact, the problem was being brought to the attention of judges.

The city prosecutor said some attorneys want to come to pretrial, talk about the case and “if it’s a bad deal,” the defense attorney will plead the defendant guilty at pretrial. He said if there is an illegal BAC, if the deprivation period was right, the temperatures for the BAT were correct and the machine was operating properly, the offender

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would plead guilty. If the BAC is below the legal limit, those are the cases that might not go to trial. However, he is comfortable with the arrests made by the dedicated DUI officers, the way they conduct field sobriety tests, and their testimony.

Reportedly, the more times the person has been through the system, the more likely he or she is to refuse a breath test. Most of the times when there is a refusal, the reason given is that an attorney told the person it would be better to refuse a test. For refusals, there is now case law in Kansas that will allow the refusal to be admitted as evidence that the defendant is guilty. The prosecutor we contacted said he uses this often and reports that most of the judges will accept it if there is something else along with the refusal such as bad driving patterns, alcohol in the vehicle, stumbling while exiting the vehicle, or incriminating statements made.

Appeals can be filed *de novo* from municipal court. But reasons for appeals are usually probable cause or claiming something went wrong with the breath test (e.g., because the person had dentures).

Handling Juvenile Cases. Juveniles are not handled differently, except that a juvenile may not be taken into an adult detention facility (by state statute). Therefore, a BAT van must be used to process the individual, because a juvenile cannot be taken to the county jail. The juvenile may be transported to the youth detention facility. Parents or guardians are notified and if that is not possible, the watch commander is notified.

Comments. Other than the Driver License hearings which cause problems for officers, the officer contacted would like to see changes for juvenile driver licenses, especially for repeat offenders. The officer contacted has arrested a juvenile who now has two DUIs, and a one-year suspension does not seem appropriate; he would like to see a longer suspension for juveniles. He is also seeing more habitual offenders (5 or 6 violations). His record is a person with 23 DUI offenses in 5 years and the person just got sentenced to 13 months in jail. The officer thinks DUI offenders are only doing the minimum jail time specified by state law because “the inn is full and they have to weigh the seriousness of the crimes.”

The prosecutor contacted described a bottle neck created by pretrial conferences which increase the workload and extend the judicial process time line. In addition, administrative hearings are used as a discovery tool by offenders and defense attorneys. Also, high turnover among police officers was mentioned as a problem for prosecutors because cases are often dismissed if the officers have left the force, or are on lengthy medical leave. And, many newer police officers are not familiar with all of the technical aspects of a DUI case. This is not a problem with the dedicated officers who are so well trained, most of the defense attorneys “will not mess with them.”

HATTIESBURG, MISSISSIPPI

Department Size. The officer contacted made 511 DUI arrests in 1995 and 448 in 1996. He is part of a two-person DUI task force in Hattiesburg which is supplemented by a DUI caseworker who is a deputy court clerk. All three positions are supported by 402 funds.

State Laws. In Mississippi BAC limits are ≥ 0.10 for adults and ≥ 0.08 for persons under 21 years of age.

Enforcement. The task force officers are instructed to patrol anywhere in the City for the purpose of identifying and arresting DUI's. They also process DUI's stopped by regular patrol officers, on request. The DUI caseworker works the same shift as the DUI task force officers (8pm to 5am). She works Tuesday through Saturday nights while the officers rotate 6 days on, 4 days off.

Apprehension. The officer notifies the caseworker of the stop and the ID of the potential arrestee. They use standard detection cues for probable cause for the stop.

Field Investigation. They employ in-vehicle video cameras. A passive alcohol sensor is used to help confirm the presence of alcohol and SFST's are applied.

Arrest and transport violator. When officers think they may make an arrest, they notify the caseworker who begins filling out the paperwork while the suspect is being transported. The 20 minute pre-breath test observation period begins at the time of the stop. No Miranda warnings are given unless a felony charge is likely.

Post Arrest Investigation and Processing. Once at the station, the breath test or refusal is taped. If the breath test is 0.10 or above or there is a refusal, a DUI arrest is made. The officer must only fill out a brief narrative, swear to the charges before the caseworker, sign the paperwork which has been filled out by the caseworker and then transport the prisoner to the jail and drop him or her off with the booking form which was prepared by the caseworker.

Arrest and Processing Time. The officers state that they average about 30 minutes per DUI arrest from time of stop until they return to patrol when the DUI caseworker is on duty. The more recalcitrant suspects require about 45 minutes.

Prosecution Support. DUI cases are only tried on Thursday afternoons beginning at 2 p.m. The court has the officers' schedules and does not schedule cases when the officers will be off. The officers need not be present at the first appearance, at which time about 50% of violators plead guilty.

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Comments. An innovation in Hattiesburg is that DUI cases are only tried on Thursday afternoons beginning at 2 p.m. and that officers' DUI cases are only set for trial around their regular work schedule. Also, officers are not required to be present at a suspect's first appearance, which saves a lot of time because about half of the individuals charged with DUI plead guilty.