



# Montgomery County Government

MONTGOMERY, COUNTY COUNCIL  
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## TITLE

### A Description and Evaluation of the DWI Program and DWI Process in Montgomery County.

	<u>CONTENTS</u>	<u>PAGE</u>
I.	Summary and Major Observations . . . . .	1
II.	Authority, Scope, Methodology and Acknowledgement . . . . .	3
III.	Introduction, Background and Organization of the Report . . . . .	5
IV.	Description of Components Involved in the DWI Program . . . . .	7
	Federal . . . . .	7
	State of Maryland . . . . .	8
	Legislative . . . . .	8
	Judicial . . . . .	8
	Executive . . . . .	9
	Montgomery County . . . . .	16
	Police Agencies . . . . .	16
	Department of Corrections and Rehabilitation . . . . .	18
	Department of Addiction, Victim, Mental Health . . . . .	20
	Department of Family Resources . . . . .	22
	Alcoholism Advisory Council . . . . .	23
	Criminal Justice Commission . . . . .	24
	Public Schools . . . . .	24
	Private Organizations and Entities . . . . .	25
V.	Description of the DWI Process . . . . .	29
	Enforcement . . . . .	29
	Prosecution . . . . .	34
	Adjudication . . . . .	36
	Disposition . . . . .	41
	Rehabilitation . . . . .	45
VI.	DWI Programs in Other Jurisdictions . . . . .	47

VII. Observations and Comments . . . . .	50
General Observations . . . . .	50
Federal Government Involvement . . . . .	53
State Government Involvement . . . . .	54
County Government Involvement . . . . .	57
Law Enforcement and Criminal Justice . . . . .	59
Assessment, Education and Rehabilitation . . . . .	65
VIII. Agency Comments . . . . .	68

Exhibits

- A - Glossary of Terms
- B - Interviews
- C - Maryland Code Relating to DUI/DWI
- D - DUI/DWI Bills: 1981-86
- E - The DWI Process

## 1. SUMMARY AND MAJOR OBSERVATIONS

### 1. Summary

The problem of the drinking driver is pervasive, complex, dynamic, and emotional. It is pervasive because it cuts across public and private institutions, jurisdictions, and all three branches of government -- executive, legislative, and judicial. It is complex because it deals with two fundamental legal and human activities -- that of drinking and driving.

The DWI problem is dynamic because practically every day we find more information, more statistics, and a greater public awareness of the problem. Finally, it is a highly emotional issue. Where there was once great humor associated with inebriety -- the harmless, comical person at most every party or sporting event -- now there is anger and fear that the inebriate will soon be driving home in a vehicle and threatening the lives of other highway users. Through the efforts of MADD, SADD, and other groups and individuals, the problem of the drinking driver has been brought into its proper perspective: a threat and menace to society.

Since the early 1980's, there has been a major effort to alert the public to this threat. Tougher laws relating to driving while intoxicated, impaired or under the influence have been passed and enforcement efforts by police agencies have been dramatically increased. Accompanying this new emphasis, which has centered primarily in the criminal justice area, is an emerging realization by those most involved with the DUI/DWI issue that any long term solution to the problem must be in the areas of prevention and rehabilitation.

In this report the many Federal, State, and local components involved in the various aspects of the drinking driver program are described, as are the laws, policies, regulations and procedures which relate to the DWI problem. Also presented is a detailed description of the DWI process which has evolved to deal with the drinking driver. This DWI process includes criminal justice, administrative licensing, and health and alcohol education/treatment elements.

This report does not contain specific recommendations on how to solve the DWI problem; rather it presents a number of observations and comments which hopefully will serve as a catalyst in bringing together the many public and private elements involved in the DWI process so that solutions to the DWI problem can be approached in a more tightly coordinated and systematic manner.

## 2. Major Observations

Among the reports, observations and comments, the following are highlighted:

- General:

The DWI problem cannot be solved solely through the criminal justice process.

A systems approach is needed to solve the problem of the drinking driver.

- Federal Government:

Federal government involvement in the DWI problem should be expanded, especially in the area of evaluating the effectiveness of DWI-related laws and programs.

- State Government:

The State government must provide more visible direction and leadership in the effort to solve the DWI problem.

The State should provide an independent, reliable funding source for DWI-related programs and initiatives.

- County Government:

The County government must also provide more visible direction and leadership in local efforts to solve the DWI problem.

- Law Enforcement and Criminal Justice:

Enforcement agencies should continue their current emphasis on arresting DWI offenders.

Legislation should be enacted to restrict the prosecutor's charging discretion in alcohol-related traffic offenses.

Judges need to become more involved in the search for improvements in the DWI criminal justice process and for solutions to the DWI problem.

- Alcohol Assessment, Education and Rehabilitation:

Alcohol screening and assessment techniques should be improved.

DUI/DWI alcohol education and treatment programs require evaluation as to their effectiveness.

## II. AUTHORITY, SCOPE, METHODOLOGY and ACKNOWLEDGEMENT

1. Authority. Council Resolution No. 10-1875, April 29, 1986, subject: Amendment to the CY 1986 Work Program of the Office of Legislative Oversight.

2. Scope. The Council's Health and Human Services (HHS) Committee, in reviewing the FY 87 Operating Budget of the proposed Department of Addiction, Victim, and Mental Health Services, was concerned with the lack of information on the DWI program, especially the coordination requirements among the various public and private agencies involved. As a result, the HHS Committee requested, and the Council concurred, that the CY 86 work program of the Office of Legislative Oversight would be amended to add the additional project of reviewing the DWI program, reporting to the Council on the program's current status, and advising the Council on the best method of coordination among all components involved in the program.

(Note: The initials DWI are generally understood to mean Driving While Intoxicated. However, in researching Federal and State statutes, case law and the myriad articles and documents relating to this subject, it became obvious that other terms are used to connote the same general condition as DWI, namely, drinking to the extent of affecting one's judgment, discretion, coordination and ability to operate a vehicle. Thus, one will read of "driving while under the influence (DUI)", "operating a vehicle while impaired", "drunk driving", and "driving while intoxicated or under the influence of drugs and/or alcohol". For the purpose of this report, DWI will be used to connote the drinking driver or the act of driving while under the influence or intoxicated. Other terms will be used only when there is a specific requirement to differentiate between driving while under the influence (DUI) from driving while intoxicated (DWI) such as when describing the penalties for DUI and DWI, because they are separate and distinct offenses under Maryland law. Also, at Exhibit A is a glossary of terms relating to the drinking driver issue.)

3. Methodology. The review was conducted from early May through October 1986, using a variety of fact-finding techniques, to include:

- Reviewing Federal and State laws, regulations, procedures and directives of the following public agencies involved in DWI matters: the Federal Department of Transportation, the Office of the Governor of Maryland; the State Departments of Transportation, Health and Mental Hygiene, and Public Safety and Correctional Services; the Public Schools; the State's Attorney's Office; the Public Defender's office; and the District and Circuit Courts.

- Reviewing the regulations, procedures and operating directives of County agencies, departments, offices, boards, commissions and committees involved in DWI matters.
- Interviewing representatives of Federal, State and County agencies, departments and entities involved in DWI matters.
- Interviewing representatives of various private and not-for-profit organizations concerned with the DWI issue, to include: the National Commission Against Drunk Drivers, Mothers Against Drunk Driving (MADD), Alcoholics Anonymous (AA), practitioners and providers, defense attorneys, and citizens.
- Interviewing representatives of the following jurisdictions: the District of Columbia, and Prince George's, Baltimore, Fairfax and Arlington Counties.

At Exhibit B is a list of Federal, State, County and private agencies who were interviewed.

4. Acknowledgement. The Office of Legislative Oversight (OLO) acknowledges the prompt and courteous support from representatives of the various Federal, State and County agencies. Interviews were candid, information was forthcoming, and cooperation was excellent. It is the practice of OLO not to single out any specific person for commendation for fear of overlooking others equally worthy. However, in this report the author would like to identify a State employee, Ms. Mary Moffatt, Traffic Section, District Court. Ms. Moffatt supervises a small, but highly dedicated staff that is responsible for the traffic records and computer operations in the District Court. During the course of this review, I had the opportunity to observe the operations of Ms. Moffatt's staff and was singularly impressed with their dedication, efficiency and professional performance.

In the course of this review, I found nothing that would cause me to question the individual sincerity of those whose official position or personal cause involves finding ways to reduce the incidents of drunk driving. However, after interviewing almost 100 individuals who are involved in DWI and related matters, one is exposed to the full spectrum of opinions, facts and sentiments concerning the real and perceived DWI problems and the recommended solutions. This review examined and considered all viewpoints; however, the report solely represents the judgments, opinions and observations of the author.

### III. INTRODUCTION, BACKGROUND AND ORGANIZATION OF REPORT

1. Introduction. The problem of the drinking driver and the development of programs to deter the incidents of driving while under the influence or intoxicated have been around for a long time. Society has attempted to deal with this problem primarily through the state administrative licensing powers and the criminal justice system. Because drinking alcoholic beverages is legal (and popular) and driving vehicles is also legal (and absolutely necessary in our mobile society), efforts to rally public opinion and institute a comprehensive program against this societal problem has consistently met with little success.

In early 1980, there arose a new wave of public awareness and concern for the terrible loss in lives and property due to the drinking driver. This new awareness was mainly through the efforts of Mothers Against Drunk Driving (MADD) and several follow-on groups, among them Remove Intoxicated Drivers (RID) and Students Against Drunk Driving (SADD). Although the Federal Department of Transportation, mainly through the National Highway Traffic Safety Administration, had for many years tracked the alcohol crash problem, this new awareness and attention to the public danger of the drinking driver resulted in an acceleration of efforts on the Federal, state and local levels to combat this problem.

2. Background. At the Federal level, President Reagan appointed a Presidential Commission on Drunk Driving in April 1982. The Commission's report in November 1983 included 39 recommendations addressing public awareness and education, regulation of alcoholic beverages, private sector initiatives, licensing, enforcement, prosecution, adjudication, and education and treatment. When the Commission ceased its operation, a privately funded non-governmental organization, the National Commission Against Drunk Driving, was established to monitor the implementation of the Presidential Commission's recommendations.

In Maryland, Governor Hughes' actions pre-dated the Presidential Commission, when, in August 1980, he appointed a Task Force on the Drinking Driver to develop measures to counteract the problems associated with drivers who were intoxicated or whose abilities were impaired by alcohol. The report of that Task Force, issued in October 1980, presented a modest number of legislative, executive and judicial considerations as a broad-based attack on the drinking driver problem. The Task Force, whose term was extended several times over the next six years, officially ceased to exist on June 30, 1986.

Montgomery County also recognized this new awareness of the drinking driver problem. In July, 1981, the County Executive established an Ad Hoc Task Force on Drinking and Driving. This too was a broad-based group, including representatives from Federal, State and County public agencies and private business, religious, and professional County-based organizations. The Task Force report, issued in May 1982, contained 66 recommendations. These recommendations have been monitored by an on-going Alcohol and Highway Safety Committee, a standing committee of the County's Alcoholism Advisory Council.

3. Organization of the Report. The program to deter the drinking driver involves Federal, state and local initiatives. The majority of the initiatives introduced in the past six years has been in the criminal justice area. Consequently, the state and local governments have been dominant, with the Federal government taking a supportive role by enacting incentive grants to states which adopt anti-drinking and DWI programs, passing specific legislation such as the 21-year minimum drinking age and specific laws relating to BAC (Blood Alcohol Concentration) levels and administrative loss of driving privileges for driving while under the influence or intoxicated. The major Federal activities in the DWI area are by the Department of Transportation's National Highway Traffic Safety Administration.

In the following section of the report, each of the major Federal, State and County organizational components involved in the program to deter drinking drivers will be briefly described. In Section V, the DWI process is described. This process involves five interrelated and interdependent phases: enforcement, prosecution, adjudication, disposition and rehabilitation. Finally, Section VII of the report will present a number of observations and comments on the DWI program and the DWI process.

#### IV. DESCRIPTION OF COMPONENTS INVOLVED IN DWI PROGRAM

##### General

1. Major operational components in the DWI program are found at the State and County levels, with the Federal government providing support from both the Administration and the Congress. This section of the report describes the major public components in the DWI effort, beginning at the Federal level and proceeding through the State to the County components. Following the discussion of the County is a description of those private organizations and entities involved in the DWI effort.

##### Federal

2. As stated earlier, the President established a Commission on Drunk Driving in April 1982 as part of a renewed awareness to the real danger of the drinking driver. However, the Federal government has, since the introduction of motor vehicles, been aware of this problem. As early as 1904, a Federal study of fatal crashes involving "automobile wagons" found that a large fraction of the drivers were "inebriated and moderate drinkers". More recently, the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) and the National Transportation Safety Board have devoted a major effort to heighten public awareness of the drinking driver problem. Most of the current statistical information and public education data concerning drunk driving has been assembled by NHTSA with a major contribution from the private sector.

3. The Congress has provided bipartisan support to the DWI movement, especially through the enactment of grants and incentives to those states which enact drunk driving programs and legislation. Most recently, Congress passed legislation mandating a uniform drinking age. Beginning in 1986, states which have not enacted a minimum age of 21 years for the consumption of alcoholic beverages will have a percentage of their Federal highway funds withheld.

4. In October 1982, Congress enacted legislation providing incentive grants of up to 50% of a state's FY 83 Highway Traffic Safety Funds apportionment (23 U.S.C. 408) for implementing specific programs designed to deter drunk driving. Programs which qualify for this incentive include: prompt suspension of the driver's license for DWI offenders, mandatory sentences for repeat offenders, 21 years of age as the minimum age for drinking any alcoholic beverage, and a BAC of not more than .10% as evidence of driving while intoxicated. Maryland currently does not qualify for any additional incentive funds because it has not enacted sufficient laws and programs necessary to qualify for the grants; however, Maryland has established 21 years as the minimum age for drinking any alcoholic beverage. Because Congress has extended the program through FY 88, Maryland could still qualify for the full 50% additional incentive grant funds, which would be approximately \$785,500.

## State of Maryland - Legislative Branch

5. All three branches of the Maryland State government are involved in DWI-related matters. Legislation dealing with alcohol and operating a motor vehicle are found in Article 27 of the Maryland Code and in the Transportation, Health, and Courts and Judicial Proceedings Articles. At Exhibit C is a listing of the pertinent sections of the Annotated Code of Maryland relating to traffic offenses involving alcohol.

6. In the six years following the presentation of the report of the Governor's Task Force, the legislature has passed a number of bills relating to drunk driving. At Exhibit D is a brief summary of the major DWI bills which were passed in each legislative session from 1981 through 1986.

7. In the last two years there has been a marked reduction in legislation relating to drinking drivers, a situation that has generated criticism from advocates of tougher drunk driving laws. However, two bills passed in the 1985 and 1986 sessions of the Maryland General Assembly are noteworthy. The 1985 bill imposed a mandatory minimum penalty of imprisonment of not less than 48 consecutive hours or community service of not less than 80 hours for anyone convicted of DWI within 3 years after a prior conviction for DWI. This penalty is not subject to suspension or probation, (Section 27-101, Transportation Article). The 1986 session bill makes refusal to submit to a chemical analysis admissible in evidence at the trial of an individual charged with DUI or DWI; however, the effect of that bill is weakened in that "no inference or presumption concerning either guilt or innocence arises because of refusal to submit" (Section 10-309, Courts and Judicial Proceedings Article).

## State of Maryland - Judicial Branch

8. Under the State Constitution and laws enacted by the General Assembly, the Judicial branch is responsible for adjudication of DUI/DWI cases.

9. District Court. The District Court, an agency totally funded by the State, predominantly hears misdemeanor cases which include alcohol-related traffic offenses. Because there are no jury trials in the District Court, any demand for trial by jury (which is a defendant's right if the criminal offense carries a penalty of imprisonment in excess of 90 days), must be referred to the Circuit Court.

Presently, there are 10 District Court judges. Two of the judges hear only juvenile cases, many of which involve alcohol-related traffic offenses. The remaining eight judges hear cases in three locations: Gaithersburg, Silver Spring and Bethesda. In 1985, a total of 154,000 motor vehicle cases were received by the District Court, of which 5,365 (3%) involved alcohol-related offenses. (As a matter of note, the 154,000 motor vehicle cases and the 5,365 alcohol-related offenses represent the highest number in each category for any Maryland county or Baltimore City. Also, statistics reported by the Administrative Office of the

Courts indicate that the Montgomery County District Court judges process more motor vehicle cases per judge than any of the 11 other Maryland District Courts.)

The alcohol-related traffic cases are heard on 11 dockets per week as follows: four dockets on Monday, Tuesday, Thursday and Friday afternoons in Gaithersburg and Silver Spring; and on Monday, Thursday and Friday afternoons in Bethesda.

10. Circuit Court. The Sixth Judicial Circuit, Montgomery County, is the other trial court in the County and the only court where a jury trial can be obtained. As stated earlier, alcohol-related traffic cases reach the Circuit Court as a result of a request for a jury trial or on appeal of a District Court judgment.

As of January 1986, the Circuit Court had 13 judges of which a minimum of two were assigned to hear DUI/DWI cases on appeal or on demand for jury trial. Appeal and jury demand cases are heard on Wednesday mornings. According to the Maryland Judiciary Annual Report, the Circuit Court in FY 86 heard 328 cases on appeal and 1,663 cases on demand for jury trial.

Except for salaries and related personnel costs of the judges, the Circuit Court is funded by the County. For FY 85, the County funded \$2.7 million. The Clerk of the Circuit Court and all support operations of the Clerk's Office are funded by the State.

#### State of Maryland - Executive Branch

11. Overview. A number of Executive branch agencies are directly involved in activities relating to drunk driving. These include the State's Attorney, the Office of the Governor and three executive departments: the Department of Public Safety and Correctional Services (State Police and Parole and Probation); the Department of Transportation (Motor Vehicle Administration); and the Department of Health and Mental Hygiene (Alcohol Control Administration). The DWI-related activities of these three departments are organized into a State Comprehensive Drinking Driver Program with specific functions assigned to Parole and Probation (P&P), the Motor Vehicle Administration (MVA) and the Alcohol Control Administration (ACA), all working in conjunction with the State courts system.

12. State's Attorney. The State's Attorney is an independently elected official responsible for prosecuting all criminal cases. Both DUI and DWI are criminal, misdemeanor offenses. They are also incarcerable offenses; that is, anyone convicted of either a DUI or DWI offense can be sentenced to jail. As with all misdemeanor offenses, DUI/DWI cases are heard initially in the District Court. To prosecute those cases, nine Assistant State's Attorneys (out of a complement of approximately 30) are assigned to the District Court.

The nine Assistant State's Attorneys prosecute alcohol-related traffic offenses on 11 dockets per week at three District Court locations. Cases which result in a jury demand or appeal are

handled at the Circuit Court on a rotational basis by all 30 Assistant State's Attorneys.

The FY 85 statistics of the caseload provided by the State's Attorney's Office for DUI/ DWI dispositions are presented below:

- 5,365 DUI/DWI cases were received at District Court
- 3,260 cases were resolved at District Court
- The difference of 2,105 cases (5,365 - 3,260) represents 983 cases which were referred to the Circuit Court for jury trial and 1,122 cases which were unresolved at the end of the year
- Of the 3,260 cases resolved, 2,783 (85%) were found guilty and disposed of as follows:

<u>Disposition</u>	<u>Number (%)</u>
DWI	447 (16%)
DUI (Alcohol)	549 (20%)
DUI (Drugs)	17 (1%)
Art 27, Sec. 641 Probation Before Judgment	<u>1,770 (63%)</u>
Total	2,783 (100%)

- The remaining 477 cases (15%) were found not guilty or disposed of as follows:

<u>Disposition</u>	<u>Number (%)</u>
Not guilty	85 (18%)
Nolle prosequi*	390 (82%)
STET*	<u>2 (&lt;1%)</u>
Total	477 (100%)

The expenses for the State's Attorney's Office are totally funded by the County. In FY 85, the expenditure for this Office was \$2,700,000.

13. Office of the Governor. In August 1980, Governor Hughes appointed a Task Force on the Drinking Driver, with membership drawn from the Legislative and Judicial branches, various Executive departments, the National Highway Traffic Safety Administration and private groups. The Task Force issued a report in October 1980 containing a number of legislative and administrative initiatives and a recommendation that the Governor extend the term of the Task Force so it could continue to study numerous items on its agenda and support the Administration's ambitious DWI legislative program.

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\*See Glossary at Exhibit A.

The Task Force continued in existence until June 30, 1986, with staff support provided by an Executive Assistant for Transportation, Public Safety, and Correctional Services. A review of the legislative programs during the six-year history of the Task Force indicates that a large number of bills initiated and supported by the Task Force were passed in the 1981, 1982, and 1983 legislative sessions; however, in the most recent three years of the Task Force's existence (1984-86), there was little activity by this group.

Within the Executive branch, there has been little success in drawing the various departments into a cohesive and concerted systems approach to the drinking driver problem. As an example, the three Administration agencies jointly responsible for the State Comprehensive Drinking Driver Program (Parole and Probation, Motor Vehicle Administration and the Alcohol Control Administration) have for almost two years not been able to reach agreement on a memorandum of understanding as to their respective functions and responsibilities.

With the Governor's Task Force and the Executive Assistant to the Governor for Task Force matters going out of existence on June 30, 1986, there is currently no element in the Office of the Governor with responsibility for overseeing or coordinating Administration activities relating to the drinking driver problem.

14. Department of Public Safety and Correctional Services. Two elements of this department have a direct role in the statewide DWI program: the State Police and the Division of Parole and Probation.

15. State Police. The State Police, along with County and municipal police agencies, are responsible for enforcing the traffic laws. Since 1981, when the new emphasis on apprehending DUI/DWI offenders began, the State Police report the following arrests:

Table 1

Arrests by State Police for DUI/DWI, Statewide  
for Calendar Years 1981 - 1985

(Source: State Police Records)

<u>Calendar Year</u>	<u>No. of DUI/DWI Arrests</u>
1981	21,651
1982	33,556
1983	33,778
1984	33,723
1985	31,873

The State Police is involved in other DWI-related activities besides arresting drunk drivers. All training of breathalyzer operators and technicians is provided by the State Police under the supervision of the State Toxicologist. In addition, the State Police has responsibility for analyzing all blood alcohol samples submitted by all Maryland law enforcement agencies.

16. The Division of Parole and Probation. The Division of Parole and Probation is responsible for traditional, court-ordered supervision and counseling services to individuals convicted of a wide variety of criminal offenses. In addition, Parole and Probation is responsible for convicted DUI/DWI offenders under the Drinking Driver Monitor Program (DDMP). The DDMP, established by the Governor in response to a recommendation of the Governor's Task Force, is responsible for providing specialized probation supervision and monitoring for DWI offenders to assure compliance with court-ordered dispositions. Originally assigned to the Motor Vehicle Administration, the Drinking Driver Monitor Program was transferred in 1984 to the Division of Parole and Probation.

The Drinking Driver Monitor Program (DWI Monitor) receives its clients through court probation mandates from the District and Circuit Courts as part of the disposition of the DUI/DWI cases. The court-ordered conditions usually include probation (the District Court can give up to three years probation, the Circuit Court, five years), total abstinence from alcohol and drugs, attendance at meetings of Alcoholics Anonymous (AA), and weekly, in-person contact with the DWI Monitor where attendance by the probationer at the various education and treatment programs is checked and abstinence from alcohol is verified.

Violation by the probationer of any of the probation conditions is cause for the individual to be issued a Violation Notice and made to appear before the judge at a violation hearing. Such violations usually involve one or more of the following: failure to report weekly to the DWI Monitor; drinking alcohol or using drugs; failure to attend required treatment sessions or AA meetings or disruptive behavior at those sessions/meetings; or receiving another DUI/DWI citation.

As of December 1985, approximately 30,000 cases have been referred to DWI Monitors statewide. Montgomery County is second only to Baltimore County (where the monitor program originated) in the number of active cases. Since its establishment in Montgomery County in September 1983, the DDMP has, as of April 1986, processed a total of 5,322 referrals.

In addition to the Drinking Driver Monitor Program, agents of Parole and Probation also provide court ordered supervision and counseling to DWI offenders. There is no firm rule governing whether a DWI offender is referred to DDMP or to Parole and Probation. It appears that judges simply have a preference for one or the other. Occasionally, a judge will order both Parole and Probation and DDMP to exercise dual supervision over the probationer. In those instances, DDMP assumes primary responsibility for the supervision.

17. Department of Transportation. The Motor Vehicle Administration (MVA), an agency in the State Department of Transportation, is responsible for all operations relating to titling and registering motor vehicles and examining and licensing vehicle operators. Specific MVA functions and responsibilities relating to the drinking driver problem include:

- Conducting a six-week alcohol education program for first offenders assessed to be "social" drinkers and who have been referred to the MVA program by the courts, attorneys, probation officers, health officials, or an MVA Administrative Hearing Officer.
- Conducting Administrative Hearings to determine appropriate action for drivers convicted of an alcohol-related traffic offense, for individuals who refuse to submit to a chemical test for alcohol, and for drivers who have accumulated a specific number of points.
- Maintaining a point system and assessing points as specified in Transportation Article 16-402. (For conviction of driving while under the influence of alcohol, eight points are assessed; for conviction of DWI, 12 points are assessed.)
- Suspending the license of an individual who accumulates a total of eight points and revoking the license of an individual who accumulates 12 points. (For an individual whose employment depends on driving a motor vehicle in the course of regular employment, suspension requires 16 points and revocation, 19 points. However, this special consideration does not apply if any of the points were acquired as a result of a conviction for an alcohol-related traffic offense.)
- Re-examining and reissuing licenses to those who have had their license either revoked or suspended.
- Issuing drivers' licenses with an alcohol restriction (No. 9 of the restriction codes). The code alerts arresting officers that the driver has a record of an alcohol-related traffic offense. Anyone with this restriction can be required to submit to a chemical breath test when requested by a police officer.. If the driver consents to take the test and the test indicates any positive reading, the driver can be charged with a violation of the alcohol restriction.

18. Department of Health and Mental Hygiene. The Alcohol Control Administration (ACA), an agency in the Department of Health and Mental Hygiene, is responsible for the following activities relating generally to alcoholism and specifically to DUI/DWI:

- Establishing policies and regulations for alcoholism education programs; and, upon application and satisfactory review, approving public and private alcohol education programs and facilities. (Note: The six-week Alcohol Education Program of the Motor Vehicle Administration is not subject to ACA review and approval).

- Establishing policies and regulations for alcoholism and alcohol abuse facilities and, upon application and inspection, certifying public and private treatment programs and facilities. Certification requires that both public and private facilities comply with Federal, State and local ordinances, laws, and regulations, including all zoning, health, welfare, safety and environmental requirements.
- Once certification is granted, monitoring monthly the treatment programs of public agencies and quarterly for private providers.
- Administering grants to the local health departments to carry out the ACA's responsibilities as part of the State Comprehensive Drinking Driver Program.

The FY 87 budget of the Alcohol Control Administration is \$16.5 million. A significant portion of that budget is passed on as grants to the counties and Baltimore City. In recent years, grants from ACA to Montgomery County have remained relatively constant except for slight increases for inflation, a large infusion in 1984, and for one-time items such as data processing equipment. The ACA grants to local health departments are used to fund the following alcohol-related activities:

- Screening/Assessment. When directed by the court, or upon request, assess whether the individual is a "social" or "problem" drinker.
- Alcoholism education services. Fund an ACA approved six-week alcoholism education program for individuals convicted of DUI/DWI and assessed to be "problem" drinkers. (Note: Those assessed to be "social" drinkers participate in the six-week alcohol education program conducted and funded by the Motor Vehicle Administration.)
- Alcoholism treatment. Fund an ACA certified 20-week alcoholism treatment program for those individuals convicted of DUI/DWI who are assessed to be "problem" drinkers.
- Clinical supervision. Monitor individuals participating in alcoholism treatment programs.
- Data collection and reporting to ACA. Provide information into the ACA developed data collection and reporting system on alcoholism screening, education and treatment programs.

The Alcohol Control Administration exercises no authority in the following areas:

- Approval of the MVA's Alcohol Education Program.

- Certification of the screening-assessment procedures by public health agencies or private providers.
- Certification of the qualifications of individuals conducting alcohol screenings and assessments, education, or treatment programs.
- Finally, the State neither certifies nor licenses alcoholism counselors. There is in Maryland a private organization which issues certifications, the Maryland Alcoholism Counselor Certification Board (MACCB). Upon proof that an individual has delivered at least 4,000 hours of direct counseling to alcoholics, has completed 180 hours of specialized training, has successfully passed written and oral examinations, and has paid a fee, the MACCB will certify that individual as a Certified Alcoholism Counselor (C.A.C.). The State neither endorses nor controls the MACCB, but does recognize the C.A.C. as a standard by which the qualifications of alcoholism counselors are judged.

19. State Toxicologist. Also located in the Department of Health and Mental Hygiene is the Maryland Department of Postmortem Examiners. A staff member of the department is the State Toxicologist, who has the following responsibilities relating to DWI matters:

- Approve the type of breathalyzer equipment used to obtain a chemical test of the breath of an individual arrested for a traffic offense where alcohol is suspected.
- Initially certify, and recertify every six months, each unit of equipment (breathalyzer) used in administering the chemical test.
- Approve the training program used to train breathalyzer operators and breathalyzer maintenance technicians.
- Approve the operating protocol for administering the chemical test using the breathalyzer.
- Initially certify, and recertify annually, the qualifications of the breathalyzer operators and maintenance technicians.
- Approve vehicles used as mobile chemical testing units.
- Approve the type of equipment used to administer preliminary breath tests (PBTs).
- Approve the type equipment used by medical personnel to obtain a blood test.

20. Public Defender System. A final State agency directly involved in DWI matters is the Public Defender System. The Public Defender System provides services to those charged with a DUI/DWI who are judged to be unable to afford a private defense.

The State funds the Public Defender System through the Executive branch; however, the Public Defenders are independent of the Governor. The Public Defenders in each of the 12 districts in the State are appointed by the Public Defender System's Board of Trustees.

Currently in District No. 6 (Montgomery County) there are 13 State salaried attorneys and 13 part-time contract attorneys available to defend individuals charged with incarcerable offenses. The services of the Public Defender are not always totally free; clients sign a contract to pay an amount they are capable of paying.

The Public Defender for Montgomery County estimates that District 6 has defended about half of all criminal cases in the District Court and half of the felony cases in the Circuit Court. Of the non-felony cases in the District Court, the Public Defender estimates that about 10% are DUI/DWI offenses. For FY 85, of the 8,311 criminal cases handled by the Montgomery County District Public Defender, 851 were DUI/DWI offenses. Considering that in FY 85 the District Court received a total of 5,365 DUI/DWI cases, the Public Defender defended approximately 16% of those cases.

### Montgomery County

21. Overview. The County's involvement in matters relating to the drinking driver problem is considerable. This report has already described the important responsibility of the State in enacting laws pertaining to alcohol and operating motor vehicles, enforcing these laws by the State Police, prosecuting offenders by the State's Attorney, defending qualified individuals by the Public Defender, and adjudicating the cases in the Maryland State District and Circuit Courts.

The County's functions and responsibilities to deter drunk driving are primarily in the areas of enforcement, disposition, and alcohol education and treatment. Specifically, the following County public agencies and organizations are involved: the Department of Police and local municipal and Park police agencies; the Department of Corrections and Rehabilitation; the Department of Addiction, Victim, and Mental Health Services; the Department of Family Resources; the Alcoholism Advisory Council and its Alcohol Highway Safety Committee; the Criminal Justice Coordinating Commission; and the Montgomery County Public School System. Each is discussed below.

22. Police agencies. The major DWI enforcement agency in the County is the County Police. Other law enforcement agencies making DWI arrests include the police departments in the several municipalities, the Park Police of the Maryland-National Capital Park and Planning Commission, and the Metro Police. Although the Sheriff's Department has authority to make DWI arrests, they do so only in that rare instance where the DWI offense presents an immediate threat to public safety.

Arrests by Montgomery County for alcohol-related traffic offenses have increased each year since 1981 when national, state and local attention was focused on the growing problem of the drinking driver. Table 2 reflects the record of arrests by the County police.

Table 2

DUI/DWI Arrests for Calendar Years 1974 - 1986  
by the Montgomery County Police Department

(Source: MCPD Records Section)

<u>Year</u>	<u>Number of Arrests</u>
1974 - 1980	874 (average/year)
1981	1,464
1982	3,174
1983	3,224
1984	3,827
1985	4,607
1986 (Jan-Sep)	3,158

Specific programs initiated by the police to stop and arrest drunk drivers include:

- Establishing sobriety (safety) checkpoints.
- Saturation patrolling of specific DWI target areas.
- Increasing the training in roadside sobriety checkpoint operations.
- Increasing the training and certification of breathalyzer operators and technicians.
- Establishing liaison with the State's Attorney's Office and the District Court.
- Training in DWI detection, apprehension and case preparation (as part of basic rookie training).
- Specialized in-service training in DWI detection, apprehension and case preparation.
- Increasing patrolling and checkpoint activities during holidays and special occasions (graduation period).
- Enforcing liquor laws in off-sale and on-sale establishments.
- Increasing the availability of officers to meet court assignments.
- Increasing police reaction to reports of drunk drivers from the public, CB operators, etc.

- Participating in media campaigns to focus attention on the drinking driver problem.

The County Police Department estimates that a little over \$1 million dollars is expended in enforcing DWI laws. While an exact breakdown is not available, the following table of expenditures for calendar year 1985 is representative:

Table 3  
Estimated Expenditures for Calendar Year 1985  
by MCPD for DWI-Related Activities

(Source: MCPD Division of Management and Budget)

<u>DWI-related Activity</u>	<u>Expenditure</u>
Regular Patrol Hours	\$ 20,000
Special DWI Operations	30,640
Training (Students/Instructors)	48,240
Writing Required Reports and Forms	221,136
Salaries (Regular & Overtime) for Court Appearances	663,408
Equipment/Supplies	22,978
Administrative Overhead	<u>67,600</u>
TOTAL	\$1,074,002

23. Department of Corrections and Rehabilitation. The County's Department of Corrections and Rehabilitation is responsible for pre-trial confinement of DWI offenders and for three specific dispositions: imprisonment in the Detention Center, residential incarceration in the Pre-Release Center, and supervised community work under the Alternative Community Services.

24. The Detention Center. The Detention Center houses men and women either awaiting trial or sentencing or serving sentences of up to 18 months. The Detention Center receives DWI offenders under both pre-trial and post-trial conditions. On average, the Center has approximately 13 DWI offenders in pre-trial incarceration and approximately 16 convicted DWI offenders serving either their entire sentence in the jail or a portion of their sentence prior to transfer to the Pre-Release Center. In addition, the Center averages approximately 17 individuals each week who serve 48-hour weekend sentences (midnight Friday to midnight Sunday).

25. Pre-Release Center. The Pre-Release Center provides supervision and monitoring in a highly structured, treatment-oriented environment for selected offenders as an alternate to either total freedom with probation or incarceration in a maximum security facility such as the Detention Center. In September 1985, the Center enacted a specialized program directed at the chronic DUI/DWI offender. The program is called IMPACT, Intensive Management Program for Alcoholics Needing Correction and Treatment. The highlights of the IMPACT program are as follows:

- Target group. Individuals who have been convicted of DUI or DWI at least three times in the last five years, and who have no other contacts with the criminal justice system except for drinking and driving.
- Intake capacity. Originally established with 13 beds (10 for males, three for females), the program has had as many as 37 residents. In the 10 months from September 1985 through June 1986, a total of 259 have participated in the IMPACT program.
- Length of sentence. The IMPACT program accepts individuals for sentences from 60 days to 1 year. However, the usual sentence is 180 days, of which only 135 days are actually served because of State-mandated days off for good conduct and industrial time (time involved in constructive, full-time activity such as school or employment). Under the 60-day maximum sentence for a DUI offense, the individual would actually serve 45 days. (Note: For those sentenced to more than one year, the initial four to five months are served in the Detention Center with the remainder at the Pre-Release Center in the IMPACT program.)
- Criteria for entering the IMPACT program. The individual must be a repeat DUI/DWI offender. Either the judge, defense attorney, State's Attorney, or probation agent must refer the individual and the individual must volunteer for the program and sign a behavioral contract. Finally, if the Pre-Release Center accepts the individual for the program, the Court must sentence the individual to at least 60 days and approve the individual for the IMPACT program.
- Specialized treatment and monitoring. Once in the IMPACT program, the individual comes under a multi-faceted treatment and monitoring program that includes individual and group counseling, alcohol education and life skills training, involvement in Alcoholics Anonymous, and outside employment. Program participants are prohibited from driving (except as part of employment); drinking (alcohol testing occurs each morning before leaving for employment, upon returning to the Center, and an additional random test after 8:00 P.M. each evening); and from leaving the Center except for bonafide employment or on an approved pass.
- Cost. Except for those on public or medical assistance, each participant in the IMPACT program must pay 20% of their gross income up to a maximum of \$300 each month; a \$60 fee for the six-week alcohol education program; and a \$200 fee for the 20-week Alcohol Treatment services provided by the Department of Addiction, Victim, and Mental Health Services.

26. Alternative Community Service. Since 1977, Alternative Community Services (ACS) has provided an option to first-time offenders facing a fine, probation or incarceration for a misdemeanor or minor offense. Referrals are made to ACS by police, the State's Attorney or judges, with final authority for acceptance resting with ACS. The type of Community service includes work with both public and private non-profit agencies. For those who are not indigent, a fee of \$50 is charged.

Since November 1985, the ACS has been accepting DWI offenders into the program. As of the end of July 1986, a total of 143 individuals have been accepted for an average commitment of approximately 50 hours.

Most of the referrals are first-time DWI offenders; however, some individuals have been referred to ACS under a bill passed in 1985 by the General Assembly which mandates a minimum penalty of imprisonment of not less than 48 consecutive hours or community service for not less than 80 hours for an individual convicted of DWI within three years after a prior DWI conviction.

27. Department of Addiction, Victim, and Mental Health Services

On May 19, 1986, with the passage of Bill No. 77-85, the County Council created the Department of Addiction, Victim, and Mental Health Services. One of the major responsibilities of that department is to administer programs and provide services in the area of alcoholism and alcohol abuse. To carry out that responsibility, the Division of Alcohol and Drug Abuse Services was transferred in its entirety from the Department of Health where, after a realignment of functions, it became the Division of Alcohol, Drug Abuse and Adolescent Services.

The Division is organized into an office of the Division Director and three major program areas: Alcoholism Program, Assessment and Monitoring Programs and Alternatives and Counseling Programs. Within the Alcohol Program area are two treatment components--the Alcoholism Out-patient/Residential Treatment Services (AORTS) and the Driving While Intoxicated (DWI) Treatment Services program.

28. DWI Treatment Services. The DWI Treatment Services program provides screening, assessment, education and treatment services to court referred DUI and DWI clients.

- Screening and assessments - When a DUI/DWI defendant appears in District Court without an alcohol pre-screening report, the judge usually directs such a screening either prior to trial or prior to imposing a sentence. The purpose of the screening is to determine the extent of the defendant's involvement with alcohol.

The screenings are conducted by therapeutic counselors who are assigned to the three District Court locations. More in-depth assessments of alcohol dependency are performed by DWI Treatment Services staff at facilities located in the former Broome Junior High School in Rockville. As a result of this screening-assessment,

individuals are classified as either "social" or "problem" drinkers. To be considered a "social" drinker, the individual must score three or less on the Michigan Alcoholism Screening Test (MAST), have no history or symptoms of alcohol abuse and have no previous DUI/DWI or related alcohol offenses. To be considered a "problem" drinker, the individual would have scored four or more on the MAST test and meet other criteria: a chemical BAC of .13 or higher on the breathalyzer test, a previous DUI/DWI or alcohol related offense, a history of alcohol abuse, or a history of alcohol treatment.

Those individuals convicted of a DUI/DWI offense who were assessed to be "social" drinkers enter a six-week Alcohol Education Program conducted by the Motor Vehicle Administration. The program is presented at two locations in the County and a fee of \$60 is charged for the six sessions.

- Treatment services. Most individuals convicted of a DUI/DWI offense who are assessed to be "problem" drinkers must participate in an alcoholism education and treatment program. The alcoholism education program is six weeks in length (one session per week); the DWI treatment services program follows the education program and is 20 weeks in length, one session per week. The programs are conducted by private providers and clinicians under contract with the County. The six-week program must be approved and the 20-week program must be certified by the State Alcohol Control Administration. With the exception of those receiving medical or general public assistance, a fee of \$120 for the education program and \$200 for the treatment services are charged. The alcohol education programs and treatment services and the payment of fees are in addition to other dispositions by the court: such as fines, probation, attendance at AA meetings, and incarceration.
- FY 1985 statistics - A review of the FY 85 statistical report covering DWI Treatment Services (when this component was part of the Health Department), reveals the following highlights:
  - Approximately 1,544 screenings were performed, with one-third determined to be "social" drinkers and two-thirds, "problem" drinkers.
  - Male "social" drinkers outnumbered female "social" drinkers by approximately seven to one, with about half of the offenders in the 20-29 age group. In the case of female "social" drinkers, almost two-thirds of the offenders were in the 20-29 age group.
  - More than half the "social" drinkers had an annual income of \$12,000 or less, and over half were single.

- As in the case of "social" drinkers, there was a high ratio of male "problem" drinkers to female "problem" drinkers (approximately six to one). Over one-half were single and earned an annual income of \$12,000 or less.
- A total of 712 individuals entered the six-session alcohol education program.
- A total of 707 individuals participated in the 20-session DWI treatment services program.

29. Alcoholism outpatient/residential treatment services. In addition to the DWI Treatment Services program, the Division provides alcoholism outreach and educational services to the community and provides alcoholism treatment services to non-DWI referrals. These services include assessment, therapy and residential treatment. There are, or soon will be, three types of residential treatment services: a Quarter-way House (which will eventually be upgraded to an Intermediate Care Facility), a Half-way House for self-referred clients and transferees from the DWI Treatment Services who need more individualized or intensive treatment, and a Social Model Detoxification Facility.

30. Funding for County Alcoholism Programs. The County receives an annual grant from the State Alcohol Control Administration for alcoholism programs. These grants were relatively constant until FY 84 when the County received an enhancement grant of approximately \$150,000 to fund additional staff to carry out alcoholism programs. Since FY 84, the State grant has increased only to compensate for inflation and to fund one-time items such as \$27,000 in FY 85 for word processing equipment.

Overall, the annual State grant accounts for about 40% of the total County expenditures for alcoholism programs. For example, in FY 86, the State alcoholism grant was \$487,680. For that same fiscal year, the total County expenditure for alcoholism programs was \$1,258,120: Administration - \$319,540; Alcohol Treatment Services - \$427,012; and DWI Treatment Services - \$511,568.

According to Alcohol Control Administration records, Montgomery is the only county in the State (including Baltimore City), which annually expends more County funds for alcoholism programs than is provided in the State grant.

31. Department of Family Resources. Although not responsible for a specific County DWI-related program, the Department of Family Resources provides an important coordinating and integrating link among the various and diverse public and private agencies involved in the DWI process. Specifically, the Department of Family Resources is responsible for coordinating efforts of public and private agencies involved in reducing the incidents of drunk driving in the County and for rehabilitating DWI offenders. These responsibilities include coordination through the Substance Abuse Coordinator, management of the Community Awareness Resources Exchange (Care) Center, and staff support for the County's Alcohol and Highway Safety Committee.

- **Substance Abuse Coordinator.** Located within the Department's Division on Children and Youth, the Substance Abuse Coordinator is responsible for coordinating services in the areas of substance abuse treatment, prevention, public information and enforcement.
- **Care Center.** The Montgomery County Clearinghouse on Drug, Alcohol and Tobacco Abuse, popularly referred to as the Care Center has, since 1981, operated as a parent and public resource clearinghouse for educational material on drug and alcohol abuse prevention. The Care Center is jointly funded by the County government and the Montgomery County Public Schools and is operated by the County Awareness Project, Inc. under contract with the Department of Family Resources. As an example of the Care Center's activities in the area of drunk driving, the Center distributed over 131,000 pieces of material in FY 85, of which over 50,000 were related to drinking and driving.
- **Alcohol and Highway Safety Committee.** The Alcohol and Highway Safety Committee was established in January 1983 as a subcommittee of the Alcoholism Advisory Council. Its specific responsibility is to monitor the implementation of the 66 recommendations of the County Executive's Task Force on Drinking and Driving. However, the Alcohol and Highway Safety Committee has gone beyond simply monitoring the implementation of the report's recommendation and has become a coordination and action component for most matters related to drinking and driving. Activities of the Committee include support of Project Graduation, an anti-drinking program directed at high school seniors; Dial-a-Ride, a program for the Christmas/New Year holiday season; sponsorship of SADD and other youth activities and projects; and support of drunk driving bills during the Annapolis legislative sessions. In addition, the Committee was instrumental in organizing the Washington Regional Alcohol Program (WRAP), a regional coalition of business, government and community leaders designed to eliminate drinking and driving in the Washington Metropolitan Area. WRAP is a public education, coordinating and advocacy organization with government representation from 10 jurisdictions in Maryland, Northern Virginia and the District of Columbia.

32. **Alcoholism Advisory Council (AAC).** This State-mandated Council (Sec. 8-313, Health General Article) is provided for in Article V of Chapter 24 of the Montgomery County Code. The Department of Family Resources has a representative on the Council with ex officio, non-voting status. The Department of Addiction, Victim, and Mental Health Services is represented by three ex-officio, non-voting members, in addition to providing staff support to the Council. The AAC, composed of representatives of public agencies and private organizations, is responsible for advising the County Health Officer, the County Executive, the County Council and the State Alcohol Control Administration on local

alcoholism control programs and for monitoring recommendations on County alcoholism plans, programs and grant applications.

33. Criminal Justice Coordinating Commission. Created by County Code (Chapter 2, Sec. 2-60), the Criminal Justice Commission (as it is customarily called) is composed of representatives of the County government, State's Attorney, Courts, Sheriff, Public Defender, municipalities and the public at-large. The areas of concern of the Commission include the full range of law enforcement and the administration of justice. The Commission's specific functions are quite broad, with the following three duties especially significant for the drinking driver problem:

- Educating the community-at-large to the problems encountered by the police and other law enforcement and criminal justice authorities; promoting respect for law and achieving community involvement in the field of law enforcement; and facilitating the interaction among the constituent parts of the criminal justice system.
- Coordinating the programs and activities of law enforcement and criminal justice agencies and those of appropriate public and private organizations.
- Coordinating major programs and activities of the County's law enforcement and criminal justice agencies with those of neighboring units of government and the State, and identifying respective county, regional and State roles.

The Criminal Justice Commission recently established a Sub-committee on Drunk Driving which issued a report in March 1986 entitled, A Review of Drunk Driving Procedures.\* The report has been distributed to appropriate agencies and organizations, but as of this writing, no formal action has been taken as to the report's recommendations.

34. Montgomery County Public Schools. The School System provides a broad range of instruction on alcohol, tobacco and other drugs as part of the regular classroom curriculum for grades Kindergarten through 8. In grades 9 through 12, alcohol and driving are presented as part of the driver education and health education electives.

In grades Kindergarten through 6, instruction on the potential dangers of alcohol are taught as part of the science and social studies curriculum. In grades 7 and 8, classes on alcohol-related issues are taught as part of health units in science and physical education with the largest component being the six-week health unit in grade 8. The importance the State education system puts on instructing the children on the dangers of alcohol and other drugs (to include tobacco) is reflected in the fact that questions relating to that instruction are included in the State-mandated competency tests.

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\*"Final Report - Review of Drunk Driving Procedures, Criminal Justice Commission's Subcommittee on Drunk Driving", March 1986.

In high school, specific instruction on drinking and driving comprise six of the 52-hour classroom component of the driver education elective. Outside the formal classroom, the school system participates as counselors and advisors to anti-alcohol extra curricular organizations such as SADD (Students Against Drunk Driving) and MADART (Maryland Alcohol and Drug Action Resource Teams).

### Private Organizations and Entities

35. Overview. In addition to the private organizations and entities involved in the drinking driver issue, private individuals serve on a number of governmental and mixed private/governmental organizations. Examples of the latter include the Alcoholism Advisory Council, the Alcohol and Highway Safety Committee, the Washington Regional Alcohol Program (WRAP) and the National Commission Against Drunk Driving. For purposes of discussion, this report has organized the private organizations and entities into the following four categories:

- Groups advocating stronger measures to deter drunk driving
- Private defense attorneys
- Private alcohol education and treatment providers
- Alcoholics Anonymous

36. Advocacy groups. Three examples of private organizations active in advocating measures to deter drunk driving are MADD, the Maryland Coalition for Better Drunk Driving Laws, and SADD.

- MADD. Any discussion of advocacy for stronger anti-DWI measures has to begin with MADD, Mothers Against Drunk Driving. Founded in early 1980 by persons who had been personally struck with a tragedy caused by a drunk driver, the movement spread rapidly into all the states. Maryland was the second State to organize a MADD chapter, and Montgomery was the second county in the State to organize a MADD chapter. The Montgomery County MADD Chapter participates in all aspects of the MADD movement: public education, community awareness, legislative lobbying, and active support of other private entities and governmental organizations, task forces and symposia directed at reducing drunk driving. Two recent activities exemplify MADD's involvement. One was an analysis of the conviction and sentencing record of Montgomery County judges during the period December 1981 through October 1983. The other was MADD's successful involvement in getting legislation enacted in the period 1982 through 1985; although MADD was unsuccessful during the 1986 session of the Maryland General Assembly to lobby enactment of alcohol-related bills.
- Maryland Coalition for Better Drunk Driving Laws. The Maryland Coalition is a group of organizations and private individuals who actively lobby the Maryland General Assembly to enact alcohol-related traffic laws.

The Coalition includes such diverse groups as the Federal National Highway Traffic Safety Administration, the Maryland State League of Women Voters, the Junior League of Washington, the Maryland Shock Trauma Center and the Maryland Association of Student Councils. In the 1986 session of the Maryland General Assembly, the Coalition concentrated on four bills, all of which failed to pass: Illegal Per Se (making a BAC of .10% conclusive evidence of being drunk); Administrative Per Se (on-the-spot surrender of a driver's license for failing to submit to a chemical test or for a BAC above a prescribed limit); reclassifying a homicide or serious bodily injury by motor vehicle while intoxicated from a misdemeanor to a felony; and financial self-sufficiency (adding a mandatory surcharge to those convicted of DUI/DWI offenses to help fund anti-drunk-driving programs).

- **SADD.** Students Against Drunk Driving is another organization which is active in 29 public and private high schools in Montgomery County. The major goals of SADD are to enhance public awareness and community support and to exert positive peer pressure for deterring drunk driving. The first SADD Chapter was founded at Richard Montgomery High School in 1983. Typical of the recent activities of SADD are: Project Graduation, Project Homecoming, staffing a booth at the County Fair, and testifying at the 1986 session of the General Assembly as part of the Maryland Coalition for Better Drunk Driving Laws.

37. **Private attorneys.** In Montgomery County, most defendants are being represented by attorneys in the courts and at MVA hearings for alcohol-related traffic offenses. This increase has paralleled the increase in enforcement activities. Also expanded has been the number of jury demands in the District Court and appeals to the Circuit Court for DUI/DWI offenses. According to the Criminal Justice Commission's Subcommittee Report of March 1986, there has been a 630% increase in the number of jury demands and appeals in the period between 1981 and 1985.

Although defense attorneys are obviously benefiting financially from the increase in DUI/DWI enforcement and prosecution, they are taking an active and visible role in efforts to deter drunk driving. As an example, the private bar participated in the recent review of drunk driving procedures by the Subcommittee of the Criminal Justice Commission.

38. **Private alcohol education and treatment providers.** The number of private providers of alcohol education and treatment services has increased significantly in recent years paralleling the increase in public awareness of the drinking driver problem and enforcement of DUI/DWI laws. Their services fall into three general categories: detoxification and in-patient treatment, screening and assessment, and alcohol education and treatment.

- Detoxification and in-patient treatment. Most of the hospitals in the County provide some degree of residential detoxification and in-patient treatment for those medically at risk because of alcoholism. The Washington Adventist Hospital is under contract with the County to provide detoxification services to referrals from public agencies. Also located in the County are several in-patient care facilities which provide long-term rehabilitation for chemical dependency.
- Screening and assessment. Several private providers offer pre-trial and pre-sentencing screening and assessment for those charged or convicted of a DUI/DWI offense. The screening process usually involves the same diagnostic instruments the County uses, namely the Michigan Alcoholism Screening Test (MAST) and interviews. Referrals are from a variety of sources (family, clergy, physician, the court, self), but most are from the attorneys representing DUI/DWI defendants. Firms which provide screening and assessment may continue to serve the client with alcohol education and treatment programs, or the client may elect to use the County's facilities.
- Alcohol education and treatment. The third general category of services by private providers is alcohol education and treatment. The composition of these private education and treatment programs parallel the County's six-session education program and the 20-session treatment service, respectively. As in the case of screening and assessment, referrals come from a variety of sources, but primarily from defense attorneys. The court usually recognizes these privately provided education and treatment programs completed prior to the defendant's trial or sentencing when making a disposition. However, in almost every instance where the court makes an alcohol education and treatment referral, it is to the County's Department of Addiction, Victim, and Mental Health Services.

Prior to 1985, the State Administrative Office of the Courts granted written approval to private providers to conduct alcohol education and treatment programs through a process which most recognized as perfunctory. The 1985 session of the General Assembly passed a bill which transferred authority to approve alcohol education programs and to certify alcohol treatment services of private providers and public agencies to the Alcohol Control Administration. It should be noted that screening and assessment services are not required to be approved or certified. Hospital-based detoxification and in-patient treatment services also do not need certification by the ACA if they are accredited by the Joint Commission on Accreditation of Hospitals.

39. Alcoholics Anonymous. For over half a century, Alcoholics Anonymous (AA) has been actively working to help alcoholics recover and stay recovered. The impressive success rate of AA over the past half century has not been lost on judges. Many dispositions for an

individual convicted of a DUI/DWI offense include attendance at AA meetings. Some judges order attendance at AA meetings five times a week; however, the usual disposition is three or less meetings per week. The AA is self-supporting, accepting neither a fee from an individual nor public funds.

Attendance at AA is monitored by the DWI Monitor or Parole and Probation. Until recently, the AA issued attendance slips to individuals to verify their attendance. However, AA has recently indicated that it would stop that practice because its organization is structured on voluntary, not mandatory or obligatory attendance.

## V. DESCRIPTION OF THE DWI PROCESS

1. General. The previous section of this report briefly described the many agencies and entities at the Federal, State and local levels which are involved in the drinking driver problem. At each level of government, laws have been enacted and/or policies, regulations and directives issued, all with the goal of deterring the drunk driver; and where deterrence fails, apprehending, punishing and rehabilitating the offender.

This section describes the current DWI process, from enforcement through rehabilitation. The method used to describe this DWI process will be to follow the "typical" offender through the major steps of the process. As in all complex and convoluted processes, there really is no "typical" offender. Recognizing this limitation, the DWI process will be described under the five major steps outlined below and described graphically at Exhibit E.

- Enforcement. The whole DWI process starts with detecting the traffic offense, charging the offender and processing the charging documents.
- Prosecution. The State's Attorney's decision to prosecute a violation of a specific traffic offense or offenses; the defense by a private defense attorney or the Public Defender; or the use of one of the diversionary programs.
- Adjudication. The trial, judgment, and sentencing in the District Court, or when jury demanded or appealed, in the Circuit Court.
- Disposition. The various options available to the court to dispose of a defendant who is guilty of an alcohol-related traffic offense.
- Rehabilitation. The various alcohol education and treatment options available to DWI offenders.

### ENFORCEMENT

2. Overview. The DWI process is initiated by a law enforcement officer who determines there is probable cause to stop or detain a vehicle and determine whether the driver is under the influence of alcohol. Enforcement includes detecting the possible offense, pre-arrest screening through the application of psychophysical sobriety tests, arresting the driver, conducting a chemical test to determine the driver's blood alcohol content, and processing the DUI/DWI citation. Each stage in the enforcement process is discussed below:

3. Detection. The DWI process begins with identifying and gathering evidence to determine whether a suspect should be arrested for a DWI violation. Detection is the responsibility of law enforcement agencies, which in Montgomery County include: the State Police, County Police, police forces of the various municipalities, the Park Police of the M-NCPPC, and the Metro Police.

A rather recent innovation in some communities, to include Maryland, is to involve the public in reporting vehicles which are being operated in an erratic or unlawful manner. While this program keeps the DWI issue before the public, it has not been a major contributor to detecting drunk drivers.

Drunk drivers are detected in three general ways. The first, which accounts for the largest number of DWI arrests, is by police officers on routine traffic patrol. Individuals driving while under the influence of alcohol display identifiable erratic driving characteristics referred to as "visual cues", which police officers are trained to identify. These cues include turning with a wide radius, straddling the lane markers, narrowly missing other vehicles or objects, driving at night without lights, weaving between lanes, swerving, and driving slower than the normal traffic flow. Should a police officer observe a vehicle being operated in a manner which is characteristic of a driver who may have been drinking, the officer must decide whether those cues are sufficient probable cause to stop the vehicle and investigate the reason for the erratic driving. This requirement, that there be probable cause for stopping the vehicle, is a fundamental individual right. Failure to convince the State's Attorney, or later the judge, that there was probable cause to initially stop the vehicle--regardless of whether the driver was actually under the influence of alcohol--is sufficient reason for the State's Attorney not to prosecute the driver or for the judge to suppress all evidence gained as a result of the improper stop.

The second means of detention is through sobriety checkpoints, popularly referred to as roadblocks. Sobriety checkpoints have been used in Montgomery County since 1981 to detect drinking drivers. The use of these checkpoints has been challenged in the courts and determined to be legal provided they meet stringent specific criteria: the checkpoints are operated under clear, carefully written regulations; all vehicles are stopped and no driver is singled out arbitrarily; advance warning of the checkpoint is given so that drivers who do not wish to stop can make a U-turn or take a different route; drivers who refuse to roll down the window are allowed to proceed; and the stop lasts less than half a minute. Once a vehicle is stopped at a sobriety checkpoint, the police officer must make a rapid assessment of the driver's ability to operate the vehicle. This assessment is made by observing any of the following signs of impairment: smell of an alcoholic beverage, slurred speech, bloodshot and watery eyes, erratic or obscene language or gestures. Such signs provide the police officer with sufficient probable cause to detain the driver and request the performance of field sobriety tests.

The third general detection method involves police traffic patrols saturating a particular area where there have been previous incidents of traffic offenses involving alcohol. When using this method, the police must still adhere to the stringent requirement that there be probable cause to stop a vehicle and subject the driver to field sobriety tests.

4. Field sobriety tests. Once the police officer has concluded that there is probable cause to stop a vehicle or to detain the driver at a checkpoint, the officer has the driver exit the vehicle and perform a battery of formal psychophysical field sobriety tests. Among the tests administered are:

- Walk and turn. A divided attention test which requires the suspect to receive oral instructions from the police officer and recall those instructions from memory (mental tasks); and then to walk a prescribed number of steps on a straight line, turn around and retrace those steps, all the time maintaining balance and coordination (physical tasks).
- One-leg stand. This is another divided attention test which requires the suspect to maintain balance while standing with heels together and listening to instructions from the police officer. The suspect is required to balance on one foot while counting out loud to 30 at one-second intervals.
- Alphabet and numbers. These tests require the suspect to recite the alphabet or to count from one to one hundred, forward and then backwards.
- Horizontal Gaze Nystagmus. This test involves the police officer observing the involuntary and unconscious "jerking" of the suspect's eyes as the suspect is required to follow an object moved slowly horizontally back and forth across the suspect's field of vision. The presence of alcohol in the blood involuntarily affects the ability to move the eyes smoothly in a horizontal plane. (Note: This test can be admitted on questions of probable cause, but is not admissible in a trial in Montgomery County District or Circuit Courts.)

5. Preliminary Breath Tests. Although currently not used by the County Police, the State Police administer a preliminary breath test (PBT) with a pocket-sized device. The device, the Alco-Sensor II, has been approved by the State Toxicologist for use by State law enforcement officers as a guide to help the officers decide whether an arrest should be made. The PBT cannot be used to establish probable cause, nor can the results of the test be used as evidence in a trial. The device requires that the suspect breathe into its sensory mechanism which, when properly calibrated, gives a read-out of the alcohol content of the suspect's breath.

6. Arrest of the suspect. Should the police officer decide that the driver is impaired, the suspect is placed under arrest, handcuffed and transported to the police station for processing. The driver's vehicle is either released to a sober licensed driver of the defendant's choice, parked in a safe location and locked, or towed to a storage lot at the defendant's expense.

7. Procedures at the police station. When the accused arrives at the police station, a series of actions occur. All of the actions are prescribed either in law or departmental regulations, and some are subject to exact time limits. These actions include:

- Read the Miranda Rights should the officer intend to question the accused, and permit communication with counsel should the accused make such a request.
- Secure a certified breathalyzer operator. The arresting officer must be present and witness the administration of the breathalyzer test, but is legally prohibited from actually administering the test.
- Wait a legally-mandated 20 minutes prior to administering the breathalyzer test; the accused is not allowed to eat, drink or smoke from the time of arrest until after the chemical test is administered.
- Prior to administering the test, the arresting officer must read to the accused the "Advice of Rights to a Chemical Test", which delineates the following rights of an individual concerning the chemical test:
  - The accused has the right to submit to the chemical test with the results admissible as evidence in any prosecution for DUI/DWI.
  - The accused has the right to refuse to submit to the chemical test with such refusal also admissible as evidence. (The admissibility in court of an accused's refusal to submit to a chemical test was only recently enacted into law by the 1986 Maryland General Assembly). Certification by the arresting officer of the accused's refusal to submit to a chemical test must be sent to the Motor Vehicle Administration (MVA) within 72 hours.
- Administer the chemical test not later than the legally mandated two hours after apprehension.
- Analyze the readings of the chemical test. (The breathalyzer is calibrated to measure from .00% to .40% blood alcohol). A test resulting in a reading of .00% or above .35% must be repeated.
- Complete a report of the results of the chemical test by the breathalyzer operator with a copy given to the accused.
- Complete an arrest report by the arresting officer, to include recording the results of the chemical test, and the Maryland Uniform Complaint and Citation, which is the charging document.

If the accused signs the citation, the arresting officer can release the individual. If the accused refuses to sign the citation, that person is brought before a Commissioner to determine disposition (incarceration or release, either on bond or on own recognizance).

The above process takes from one to one-and-one half hours to complete. A major deviation to the above process will occur when the driver is unconscious or involved in a fatal accident. Should the driver be unconscious or otherwise incapable of consenting or refusing to submit to the chemical test for alcohol, the arresting officer will, provided there is probable cause to make an arrest, direct a qualified medical person to take a blood test. A blood alcohol collection kit, approved by the State Toxicologist, must be used and the blood sample sent to the Maryland State Police laboratory for analysis. If a driver is involved in a motor vehicle accident that results in the death of another person, and the police officer has reasonable grounds to believe that the individual was driving while under the influence of alcohol or intoxicated, the driver will be required to submit to a chemical test as directed by the arresting officer.

8. Processing the citation. The original copies of traffic citations for DUI/DWI offenses are forwarded within three days from each of the five police districts to the District Court in Gaithersburg. At the District Court, the citations are sent weekly to Annapolis where appropriate information is entered into the Maryland Automated Traffic System (MATS) computer system. The MATS system is designed to take the information from the traffic citation (offense, location, arresting officer, etc.) and information on the court availability dates of the arresting officer, and produce a schedule of trial dates at the specific court serving the specific police district. In addition, the MATS system generates a letter notifying the accused and other interested parties (witnesses) of the court date, location and time of trial.

A key element in scheduling a court date is the court availability date of the arresting officer. With the large volume of citations being written by State, County, municipal and other police officers and the use of three District Court locations (Silver Spring, Bethesda and Gaithersburg), it is imperative that the MATS system match the defendant with the proper arresting officer at the appropriate court. To satisfy this requirement, the District Court of Maryland requires police agencies to develop and submit to the Chief Judge of the District Court available court dates of officers writing traffic citations several months in advance. As an example, the District Court required that by September 15, 1986, officers designate which days they could be available for court appearance during the period January through June, 1987. At least one court date each month is designated for every officer who writes traffic citations. For those who write a large number of citations, a second or even a third court day each month is assigned.

Where emergencies prevent an arresting officer from meeting a pre-scheduled court date, the District Court will reschedule provided there is sufficient advance notice. Recently, the Chief Judge of the District Court of Maryland issued guidelines which require 90 days advance notice if an arresting officer will be unavailable to appear for trial on the officer's pre-scheduled court date due to leave, training, or special assignment.

## PROSECUTION

9. Overview. The prosecution step in the DWI process includes the actions and responsibilities of the State's Attorney, and a discussion of charge reduction and diversionary programs.

10. State's Attorney. As the prosecuting agency for alcohol related traffic offenses, the State's Attorney is formally notified of a specific DUI/DWI case when the District Court docket is published approximately one week prior to the day of trial. Except for cases involving serious injury or death, little pre-trial investigation of DUI/DWI offenses is conducted by the State's Attorney's Office. Usually, the State's Attorney's office opens a case file which contains pertinent documents provided by the arresting officer, such as the arrest report, the MVA "gold seal" record of a defendant's prior violations of vehicle laws and the number of points assessed for each offense, a witness list, and any victim statements.

On the day of trial, the Assistant State's Attorney assigned to a particular DUI/DWI case at the District Court is available to defense attorneys and the Public Defender to review the charges and the case file. It is at this point that decisions are made concerning the reduction or elimination of the charge, commonly referred to as plea bargaining, or plea negotiating.

11. Plea bargaining. In the criminal justice process, plea bargaining usually refers to an arrangement between the prosecuting and defending attorneys for the defendant to plead guilty to a reduced charge or a lesser number of charges in exchange for not having to stand trial for a more serious charge or for multiple charges.

In general, public opinion is critical of plea bargaining in criminal cases, perceiving the action as being "soft" on criminals. Public criticism of plea bargaining in cases where alcohol is a factor is even more pronounced. The 1983 Report of the Presidential Commission on Drunk Driving recommended that prosecutors should not reduce alcohol related traffic charges. Presently, twelve states have enacted legislation which prohibit plea bargaining in DUI/DWI cases and six other states allow lesser charges only if the court approves or the prosecutor makes public the reasons for the reduction. In addition, over 40 states effectively restrict plea bargaining through "legal per se" legislation which makes a BAC level of .10% or higher conclusive, not presumptive, evidence of DWI. Maryland has not enacted any of these laws.

The Montgomery County State's Attorney has taken a public position against plea bargaining except in those instances where there is either insufficient evidence to prove the prosecution's case ("try only what you can prove") or the reduction will not result in a substantial change in the defendant's sentence. In no instance will the State's Attorney permit plea bargaining from an alcohol-related charge to a non-alcohol related offense (example: from DWI to reckless driving).

The most common arguments against plea bargaining in alcohol-related traffic offenses, especially plea negotiating to a non-alcohol-related offense, include:

- Plea bargaining places the prosecuting attorney in the role of influencing the sanctions available to the court; conversely, the role of the judge and the full range of sanctions available to the court are reduced.
- Reduces the risk that an individual accused of an alcohol-related offense will face a total assessment of the accused's actual alcohol problem.
- The accused's public driving record will not accurately reflect the alcohol-related traffic violation should the defendant commit a subsequent offense.
- The accused is able to avoid the full impact of administrative sanctions (revocation or suspension of license and higher point assessment).

However, there are arguments favoring the use of plea bargaining. These include:

- The practice is fundamental to our criminal justice system.
- Plea bargaining helps to reduce the heavy traffic case load for prosecutors and the courts.
- In the case of first offenders, plea bargaining merely reflects reality in that most judges do not impose the full-range of sanctions on defendants who have a good driving record and the DUI/DWI offense did not involve death, personal injury or serious property damage.

12. Diversiory programs. Several jurisdictions have initiated programs which divert the offender from the usual court process at the prosecution stage. One of these programs is currently used in Montgomery County: Alternate Community Services (ACS). As previously described, ACS provides DUI/DWI first offenders the alternative of volunteering for community service in lieu of standing trial, and if found guilty, facing court-imposed sanctions. Referrals to the ACS program can be made by the State's Attorney. Participation in the program, however, is dependent upon the accused volunteering to participate and the ACS director accepting the individual. Those who are accepted into the program

and complete the hours of community service must subsequently appear in court to obtain a formal dismissal of the original DUI/DWI charge. To date, the ACS has been used infrequently for DUI/DWI offenders.

13. There are two other programs that, while not technically diversionary programs, are alternative dispositions: Stet docket and house arrest:

- Stet docket. The Stet docket is a procedure whereby the prosecutor decides not to proceed further with the prosecution of a specific charge. Besides the approval of the court, the defendant must also consent and waive the right to a speedy trial. The cases are left open, but in an inactive status for a period of time. The prosecution, depending on the offender's adherence to the conditions of the Stet, can either move for subsequent dismissal of the charges or bring the case before the court for trial. There is a strong emotional bias against using the Stet docket. Public opinion appears to view it as a way of avoiding the full sanctions of the court for a criminal offense. The State's Attorney rarely uses the Stet docket in DUI/DWI cases. Of 3,260 DUI/DWI cases resolved in the District Court in FY 85, only two were disposed of in this manner.
- House arrest. While not currently in use in Montgomery County, other jurisdictions have experimented with house arrest in lieu of prosecution. Various methods are used to monitor compliance with the conditions of the house arrest. Some involve periodic telephone checks with the monitoring agency while others use an electronic device to verify that the individual is complying with the restrictions of the house arrest.

#### ADJUDICATION

14. Overview. The adjudication stage includes all activities in the courtroom up to and including the rendering of a verdict by the judge.

15. District Court. Driving while under the influence of alcohol or intoxicated are misdemeanors, and as such, they are referred initially to one of the three District Courts for trial.

16. The defendant. The defendant is notified of the initial trial date by a letter generated by the MATS computer. The defendant had been given the official results of the breathalyzer test at the time it was administered. (In the case of a blood test, the results are either hand-delivered or sent by registered mail to the defendant.) Also, the defendant had been informed through the Maryland State Police Form #33 that the results of the chemical test would be presented in evidence at the trial without the presence or testimony of the technician (in the case of a breath test) or an analyst (in the case of a blood test). Should the defendant or defense attorney desire the technician or analyst to be present in court on the day of the trial, a request must be made in writing no later than 10 days before the trial.

The defendant, with or without counsel, must appear in the proper court room at the time designated in the notification letter on the scheduled day of trial. Most defendants appear without counsel. In those instances, the judge instructs the defendants of their right to defense counsel. Should the defendant claim not to be able to afford counsel, the judge routinely sends the individual to the Public Defender located in the District Court. In every case where the defendant indicates that counsel is desired, the judge usually grants an initial continuance. Interviews with District Court personnel indicate that approximately 70 percent of the initial court appearances are continued due to a request for defense counsel.

When the defendant appears with counsel or chooses not to be represented by counsel, the judge requests that a plea be entered. The following are examples of pleas:

- Guilty plea. In every instance where the defendant pleads guilty, the judge or the defense attorney, in the presence of the judge, thoroughly instructs the defendant on the gravity of the offense and the legal limits of the sanctions which can be imposed, stressing that DUI/DWI are incarcerable offenses. If the defendant persists in entering a guilty plea, the judge calls upon the State's Attorney to make a proffer of the evidence by reading the proffer into evidence or having the arresting officer briefly state what happened. If the defendant has no substantial objection to the proffer, the guilty plea is accepted and the defendant is given an opportunity to present evidence in mitigation.
- Not guilty. A defendant may plead not guilty and request a trial. Because there are no jury trials in the District Court, the court trial is conducted by the judge. Testimony is heard first from State witnesses and then from defense witnesses, with arguments by each side prior to a verdict. The State always goes first because it has the burden of proof, which for DUI/DWI offenses is the highest: "guilty beyond a reasonable doubt."
- Request for jury trial. Article 5 of the Maryland Declaration of Rights provides that Maryland inhabitants are entitled to trial by jury. Sec. 4-302(e)(2)(i) of the Maryland Courts and Judicial Proceedings Article has defined that right as follows: unless the penalty for a criminal offense with which a defendant is charged in District Court permits imprisonment for a period in excess of 90 days, a defendant is not entitled to a jury trial. Thus, for a charge of DWI in the District Court (maximum sentence of imprisonment for one year for first offense), a defendant can request a jury trial in the Circuit Court. However, for a charge of first offense DUI in the District Court (maximum sentence of imprisonment for two months), the defendant would not be entitled to a jury trial. In FY 85, jury trials were requested in 983 cases, which is approximately 18% of the 5,365 DUI/DWI cases received at the District Court that fiscal year.

17. The prosecution. The Assistant State's Attorney trying the case has a file on each case containing one or more pertinent documents. At a minimum, the file contains the report of the arresting officer. Even though the trial may occur seven months after the offense, the Assistant State's Attorney usually does not receive the file of a DUI/DWI case until approximately one week before the trial date.

18. The defense. Although the District Court does not maintain records as to which cases are represented by counsel, the general consensus is that the majority of defendants are not represented. Representation can be by a private defense attorney or the Public Defender.

The legal tactics of defense counsels are as varied as there are defense counsels. Some defenses are built around convincing the judge that the arresting officer had insufficient probable cause to stop the vehicle and/or to search the vehicle. The success of their defense tactic is reflected in the statistics that of 5,365 DUI/DWI cases received at the District Court in FY85, 85 of the cases, or 2%, were judged to be not guilty and in 390 cases (7%), the State's Attorney chose to "nol pros".\*

In the majority of cases where the defendant is represented by counsel and the arrest appears to satisfy the stringent probable cause requirements, the private defense attorney or Public Defender usually will concentrate on obtaining probation before judgment (PBJ) or a favorable disposition from the court. Interviews with private defense attorneys, Public Defenders and judges indicate that the two most undesirable penalties are incarceration and loss of driving privileges. Most defense attorneys and Assistant State's Attorneys interviewed opined that except where the drunk driving offense resulted in death, bodily injury or heavy property damage, judges will not incarcerate a first-time DUI/DWI offender. Accordingly, the defense tactic is to convince the court that the defendant's DUI/DWI was an anomaly and that there is no drinking problem. To this end, many defense attorneys require their clients to be pre-screened for alcohol dependency and enter a private alcohol education or treatment program prior to appearing in court.

19. The judge. In the eyes of the public, the judge is the pivotal person in the effort to deter drunk driving. Where surveys have been conducted, public opinion approves the increase in DUI/DWI enforcement by the police and supports the vigorous prosecution of DUI offenders. Likewise, surveys also reflect a general criticism of plea bargaining and other charge reduction maneuvers. Public opinion appears to view the courts as the nucleus of the process to reduce drunk driving. The general public's expectation is that the courts find drunk drivers guilty and impose stiff penalties, exacting retribution for the crime and restitution from the criminal. There are numerous examples where judges have been criticized for being soft on drunk drivers. Examples of this "softness" include giving drunk drivers probation in lieu of a judgment, imposing light sentences, or when stiff sentences are imposed, suspending most of the sentence and placing the defendant on probation.

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\*See Glossary at Exhibit A.

For those alcohol-related traffic offenses adjudicated in the District Court where there is a plea or finding of guilty, three types of conviction are most prevalent: driving while under the influence (DUI); driving while intoxicated (DWI); or the specific conviction is undetermined due to imposition of probation before judgment (PBJ).

20. DUI conviction. Maryland law (Transportation Article, Sec. 21-902(b)) prohibits a person from driving or attempting to drive any vehicle while under the influence of alcohol. Sec. 10-307(d) of the Courts and Judicial Proceedings Article specifies that a BAC of .08% or more is prima facie evidence that a person was driving under the influence of alcohol. Of 3,260 cases resolved at the District Court in FY 85, 549 (17%) were found to be guilty of DUI.

21. DWI conviction. Sec. 21-902(a) of the Transportation Article prohibits a person from driving or attempting to drive any vehicle while intoxicated. Section 10-307(e) of the Courts and Judicial Proceedings Article specifies that a BAC of .13% or more is prima facie evidence that a person driving was intoxicated. Of 3,260 cases resolved at the District Court in FY 85, 447 (14%) were found to be guilty of DWI.

22. Probation Before Judgment (commonly referred to as "PBJ" and "641"). Under Article 27, Sec. 641, the court may, if satisfied that the best interests of the person and the welfare of society would be served, stay the entering of a judgment, defer further proceedings, and place the defendant on probation. This disposition has been used extensively, especially for first-time DUI/DWI offenders and where the BAC is relatively low. In FY 85, of 3,260 cases resolved in the District Court, 1,770 or 54% were disposed of under PBJ.

Because of the frequency of its use, the "641" or "PBJ" has been criticized as being an easy way for DUI/DWI offenders to avoid punishment. The major criticism of the use of PBJ for alcohol-related traffic offenses is that the defendant escapes the administrative actions imposed by the MVA and the insurance companies. Although no points are assessed on the defendant's public driving record, the PBJ is recorded on a separate record at MVA. This MVA record, to include the record of the PBJ, is available to the courts should there be a second or subsequent court appearance.

Also, the defendant is not subject to suspension or revocation of the drivers license or is a restriction imposed on the license. Finally, because the defendant's public driving record does not reflect any points from the PBJ, the defendant's insurance company will not learn of the DUI/DWI offense and will consequently not raise the premium or cancel the policy.

Part of the criticism results from an incomplete and inaccurate understanding of the law. An examination of that section of Maryland law and interviews with judges reveal the following concerning the use of PBJ for DUI/DWI offenses:

- Before a PBJ is imposed, there must be a plea of guilty or nolo contendere by the defendant, and a finding of guilty by the judge.
- The PBJ withholds the conviction (judgment) from the record, but only so long as conditions of the probation are completely met.
- The defendant must agree in writing to accept the PBJ and no appeal of the guilty plea or finding is permitted.
- The terms or conditions of the probation may include an extended period of supervised or unsupervised probation, paying a fine, or making restitution: If no specific period of probation is imposed by the judge, the probation ends when the fine is paid.
- One of the conditions of probation requires the defendant to participate in an alcohol education treatment program approved by the Department of Health and Mental Hygiene. This provision can be waived only if the court states on the record that the defendant has no alcohol problem at the present time. (An example would be when the defendant has completed such a program prior to trial).
- PBJ cannot be used for a second or subsequent DUI/DWI violation which occurs within five years of the previous violation; and the prior PBJ constitutes a violation of Article 21-902(a) or (b).

23. Circuit Court. DUI/DWI cases may reach the Circuit Court either through a demand for a jury trial or on appeal of a District Court judgment.

24. Prayers for Jury Trial. Sec. 4-302(e)(2)(i) of the Maryland Courts and Judicial Proceedings Article provides that anyone charged in the District Court for a criminal offense for which a penalty of imprisonment for a period in excess of 90 days can demand a jury trial. Under current law, all alcohol-related traffic offenses, except a DUI with a maximum incarceration period of two months, qualify for jury trial. Such a demand is made to the District Court and the case is transferred to the Circuit Court. Before transferring the case file, the District Court sets a preliminary inquiry hearing date for the defendant at the Circuit Court five weeks hence, and sets the actual trial date three weeks after the hearing date.

The Maryland Rules require that a Circuit Court criminal case be completed within 180 days of the date of initial appearance of the defendant in Circuit Court. Consequently, DUI and DWI cases usually take precedence on the Circuit Court calendar over civil cases.

Although many alcohol-related traffic offenses are prayed to the Circuit Court for jury trial, only a small number (less than 3%) are actually heard by a jury. The majority are either pled or are heard before a judge. Consequently, the prayer for jury trial is criticized, among other things, as being simply a means to get a continuance or to shop for a more "lenient" judge.

25. Appeals to the Circuit Court. Any judgment of the District Court may be appealed to the Circuit Court. Such appeals are heard in a trial de novo; that is, the matter is tried anew as if the matter had not been heard before at the District Court and no decision had been previously rendered. The de novo appeal is frequently criticized for giving the defendant "two bites on the apple". The procedures and time schedules for appeals are approximately the same as for a jury trial demand.

26. Failure to Appear. The above discussion of the adjudication stage applies to those defendants who appear on the scheduled trial date. Unfortunately, a significant number of individuals fail to appear (FTA). Since July 1986, the Chief Clerk of the District Court of Maryland has maintained statistics on FTA's. A review of those statistics for the period July 1, 1986 through October 31, 1986 reveals the following FTA's as a percentage of DUI/DWI cases scheduled: Montgomery County, 27%; Prince George's County, 19%; Baltimore County, 10%; and Statewide, 15%.

When an individual fails to appear for trial, the judge immediately authorizes a bench warrant for the individual. However, State law requires a 20-day delay before the judge can sign and forward the warrant to the Montgomery County Police for serving. In addition to issuing a bench warrant, the court also notifies the Motor Vehicle Administration who suspends the individual's driver's license.

The major impact of failures to appear are: the defendant must be cycled twice through the court docket, thus adding to the docket load; and the lost time and associated costs for police officers who must appear twice at court.

For the same four month period as above, 421 individuals who previously had failed to appear for trial in Montgomery County were located, rescheduled and did appear before a District Court judge.

### DISPOSITION

27. Overview. Once an individual is convicted of either DUI or DWI, the courts usually give a package of sentences, not a single sentence. In this step of the DWI process, the various court dispositions and the administrative sanctions available to the Motor Vehicle Administration are discussed.

28. District and Circuit Courts. The dispositions available to the judges of the District and Circuits for defendants convicted of DUI/DWI are identical. There is general agreement that the purposes of these dispositions are: retribution, deterrence, and rehabilitation. Retribution (punishment) is intended to make the

drunk driving experience sufficiently painful that the individual will not wish to repeat the experience. Deterrence has the dual purpose of setting an example for society and incapacitating the individual for a period of time by withdrawing the driver's license. Rehabilitation is intended to educate the drinking driver and treat those individuals through behavior modification techniques in an attempt to reduce the likelihood of further dangerous behavior.

In achieving these goals, judges almost universally impose a sentence which includes a "package" of sanctions that the court believes is most appropriate to the circumstances of the particular defendant and offense. While there may be similar "packages" for similar DUI/DWI offenders, judges indicate that the individual character and needs of each defendant influences the type and severity of the penalties imposed.

The penalties and remedies available to judges include: fines, incarceration, probation with or without supervision and monitoring, attendance at AA meetings, restricting driving privileges, and rehabilitation (participation in alcohol education and treatment programs).

29. Fines and incarceration. Section 27-101 of the Maryland Transportation Article specifies the following penalties for alcohol-related offenses:

- DUI, first offense: Fine of not more than \$500 or imprisonment for not more than 2 months or both.
- DUI, second or subsequent offense: Fine of not more than \$500 or imprisonment for not more than one year or both. (Note: Whenever a defendant is going to be tried for a second or subsequent offense, the State must charge the individual as a subsequent offender and must give advance notice that it will be seeking an enhanced penalty.)
- DWI, first offense: Fine of not more than \$1,000 or imprisonment for not more than one year or both.
- DWI, subsequent offense: Fine of not more than \$1,000 or imprisonment for not more than two years or both.

A 1985 change to Sec. 27-101 added a mandatory minimum penalty of imprisonment for not less than 48 hours or community service for not less than 80 hours for a person who is convicted of DWI within three years after a prior DWI conviction. In this instance, "imprisonment" may include confinement in an in-patient rehabilitation or treatment center.

Confinement dispositions for DUI/DWI offenses are carried out in the County's Detention Center or the Pre-Release Center. As discussed earlier in this report, the Detention Center incarcerates DUI/DWI offenders either for the entire sentence or for a portion of the sentence prior to transfer to the Pre-Release Center. For those accepted directly into the Pre-Release Center's IMPACT program, an initial weekend turn-around period is served in the Detention Center.

30. Probation. In addition to those individuals who receive probation prior to judgment, practically every individual convicted of a DUI/DWI offense is placed on probation. The majority are under the supervision of the DWI Monitor. However, some judges place the probationer under the supervision of Parole and Probation; and still other judges direct dual supervision and monitoring by Parole and Probation and the DWI Monitor.

31. Attendance at AA meetings. Although the courts cannot require Alcoholics Anonymous to accept individuals convicted of DUI/DWI offenses into their program, they do make attendance at such meetings a condition of the defendant's probation. Most judges require attendance from three to five times a week for the period of the probation.

32. Restrictions on driving privileges. The Motor Vehicle Administration (MVA) has sole authority to administratively suspend or revoke a driver's license. Although the court does not have that authority, a judge can restrict a defendant's driving privileges by making such restrictions a condition of the probation. The court-imposed restriction can be either total prohibition or one which limits the probationer's driving to travel between home and the person's place of employment, AA meetings, or alcohol treatment facilities.

33. Actions by the MVA. Maryland law permits the Motor Vehicle Administration to administratively suspend or revoke an individual's driving privilege. However, the Supreme Court has ruled that driving is an "important interest" to a person; accordingly, any adverse action relating to a person's driving privilege must be with full and due process. The Transportation Article of the Maryland Code contains many references to MVA's authority in matters relating to alcohol and driving. The following four are the most important actions:

- Implied consent to a chemical test for alcohol (16-205.1);
- Conviction of driving or attempting to drive while intoxicated or while under the influence of alcohol (16-205);
- Accumulation of points for traffic offenses (16-402, 404); and,
- The possibility of an alcohol problem because of repeated traffic offenses (16-206).

These administrative actions described in detail below are significant weapons against drunk drivers because, next to incarceration, the penalty most feared by a defendant is the loss of the privilege to drive.

- Sec. 16-205.1 provides that anyone who drives or attempts to drive is deemed to have given consent to submit to chemical tests to determine the alcohol content of that person's blood. The law stipulates that a driver cannot

be compelled to submit to a chemical test for alcohol; however, should the driver refuse to take the test, the Motor Vehicle Administration will automatically schedule a hearing for suspension of the person's driver's license. For a first refusal, the period of suspension is for not less than 60 days and for not more than 6 months. For second or subsequent offenses, suspension is for not less than 120 days and for not more than one year.

- Under Sec. 16-205, individuals convicted of DUI (Sec. 21-902(b)) are subject to a 60-day suspension of their drivers' licenses. For a second conviction in a three-year period, the suspension can be for up to 120 days. Finally, for a third or subsequent DUI conviction in a three-year period, the privilege to drive can be revoked. For an individual convicted of DWI (Sec. 21-902(a)), the MVA may revoke that person's driving license. For the first revocation, the individual must wait six months before filing for reinstatement. For a second revocation, an application for reinstatement must wait a minimum of one year. Finally, for a third or subsequent revocation, an individual must wait 18 months before submitting an application for reinstatement.
- The MVA can also suspend or revoke a driver's license for accumulating a specific number of points. Sec. 16-402 assesses eight points for a conviction of DUI and 12 points for DWI. Under Sec. 16-404, for an individual who accumulates eight points because of a DUI conviction, the MVA requires that person to go before a hearing officer where a 60-day suspension can be imposed. In that same section of the Transportation Article, an individual who accumulates 12 points, either by virtue of a DWI or by conviction of a DUI plus an additional four points from one or more other traffic offenses, the individual's driver's license can be revoked for a period of up to one year. In all cases where the MVA assesses points, the assessment is as of the date of the DUI/DWI traffic violation and not as of the date of conviction by a court.
- Finally, under Sec. 16-206, the MVA may suspend, revoke or refuse to issue or renew an individual's driver's license if that individual is judged to be an unfit, unsafe, or habitually reckless or negligent driver. An indication of this would be that the person has an alcohol problem as evidenced by repeated, alcohol-related traffic offenses.

34. Alcohol education and treatment. Convicted DUI/DWI first-offenders who have been classified as social drinkers must attend a six-session alcohol education program conducted by the Motor Vehicle Administration. For defendants classified as "problem" drinkers and referred by the court to the "Health Department", the County conducts a six-session alcohol education program and a 20-session alcohol treatment program. Finally, the court can also direct that a defendant receive alcohol education and

treatment in an "alternative program". This alternative program is usually at the request of the defendant's attorney, and is provided by a private practitioner approved or certified by the Alcohol Control Administration. The next section of this report covers these rehabilitation programs.

## REHABILITATION

35. Overview. While there may be a difference of opinion as to the type and degree of sanctions the courts and Motor Vehicle Administration should impose on drunk drivers, there is general agreement that alcohol-related traffic offenders should receive rehabilitation. Currently, rehabilitation activities fall under two broad categories: alcohol education and DWI treatment services from publicly funded agencies; and a broad range of education, intervention and treatment services from private providers.

36. Court-mandated rehabilitation. Except for those instances where the defendant has already participated in a private alcohol education and/or treatment program prior to trial, the judge usually includes participation in these programs as part of the court's disposition. Under Article 27, Sec. 639 of the Maryland Code, if an individual convicted of DUI or DWI receives a suspended sentence, the court must direct participation in a State-approved alcohol treatment or education program. Should the court take exception to this, it must state on the record that the defendant has no alcohol problem at the present time.

37. Publicly funded alcohol education. Convicted first offenders who are assessed (either by a private provider or by a County therapeutic counselor) to be "social" drinkers are referred to the Motor Vehicle Administration's Alcohol Education Program. Conducted at 24 locations throughout the state, two in Montgomery County, the program consists of six weekly sessions. A fee of \$60 is assessed to all who attend this course except individuals who are on public assistance.

Those assessed to be "problem" drinkers are referred by the court to a two-part DWI education and treatment program operated under the supervision of the County's Division of Alcohol, Drug Abuse and Adolescent Services. The first part of this program involves attendance at six weekly alcohol education sessions conducted by a private organization, Maryland Alcohol Program, Inc., under contract with the County. With the exception of individuals on medical assistance or receiving general public assistance, a fee of \$120 is assessed to those attending this six-session alcohol education course.

The second part of this program is the mandatory attendance at 20 weekly DWI group therapy sessions. This treatment is conducted by contract clinicians who lead closed groups in 20 one-and-one-half hour sessions following a format provided by the County. Groups average 15 members, usually all of the same sex; however, there are also mixed sex, couples and family group formats. Except for those determined to be indigent, a fee of \$200 is assessed to those attending the twenty-session treatment program.

The County also provides individual, couples, and family therapy through contract clinical consultants for those requiring more intensive or individual alcohol-related therapy.

38. Treatment agreement for problem drinkers. All DWI offenders participating in the County's DWI Treatment Services program must sign an agreement stipulating attendance at the assigned education and treatment sessions, payment of fees, and abstinence from alcohol. In addition, the treatment agreement usually requires attendance at Alcoholics Anonymous meetings one or more times a week during the course of the education and treatment programs. Copies of the treatment agreement are sent to the court and to Parole and Probation/DWI Monitor.

39. Private providers. Recently, more approved private providers have been conducting screenings, assessments, and alcohol education and treatment for DWI offenders. The approval authority for these providers used to be issued by the Administrative Office of the Courts in Annapolis; however, a recent change in Maryland law has transferred this authority to the Alcohol Control Administration.

When considering the disposition of DUI/DWI offenders, the courts have recognized privately provided pre-trial alcohol education and treatment programs, especially in-patient alcohol intervention and rehabilitation programs. The single private group most used by the courts is Alcoholics Anonymous.

40. Alcoholics Anonymous. Extensive interviews conducted in the course of this study revealed that there is a high level of confidence in AA and its 12-step program for recovery. Many judges include attendance at AA meetings in their dispositions as a part of the individual's rehabilitation. There are several reasons for this: AA is readily and conveniently available, meeting in various locations practically every hour of the day, seven days a week; there's no charge for attending AA meetings; and it has a phenomenal success rate. According to AA, about half who enter the program are successful, that is, they stop drinking. While most court referrals to AA are usually not for a sufficient period of time to assure the same level of success, judges generally believe that any exposure to the AA's 12 steps can only help the DUI/DWI offender.

## VI. DWI PROGRAMS IN OTHER JURISDICTIONS

1. General. In conducting this review of the DWI program in Montgomery County, information was obtained on the DWI programs in other jurisdictions within the Washington metropolitan area and in other areas of the country. In the latter group were the CARTA program (Citizens Against Alcohol-Related Traffic Accidents) in Spokane, Washington and the STOP-DWI programs of New York State. Outlined below is a brief discussion of the DWI programs in the following local jurisdictions: Fairfax County, Arlington County, and Prince George's County.

2. Fairfax County and Arlington County. The DWI programs of these two Northern Virginia counties operate autonomously under the state-wide Alcohol Safety Action Program (ASAP). The ASAP program was originally federally sponsored and funded by the National Highway Traffic Safety Administration. When federal funding ended in 1975, Virginia continued funding the ASAP program.

The ASAP program represents a systems approach to the DWI problem by providing an integrated alcohol safety system at the community level. The ASAP office provides the coordinating link between the various state and local agencies involved in six DWI counter measure areas: enforcement, adjudication, case management, education/treatment, public education and evaluation. Highlights of the Fairfax and Arlington ASAP programs include:

- Provides a bridge between the criminal justice agencies and the treatment and rehabilitation health agencies.
- The ASAP director works for the Commonwealth Attorney of each county.
- The ASAP office sets the court date for DWI defendants based upon the arresting officer's availability. In the summer of 1986, the court date was averaging three to four weeks after the arrest date.
- The court orders clients directly into the ASAP program, which in turn is responsible for probation monitoring and for scheduling clients into treatment by public or private providers.
- ASAP is responsible for the total case record -- judicial and health -- of the defendant.
- The DWI education program developed by ASAP has been adopted by the Virginia State Department of Education and is presented in the elementary and secondary schools.
- The ASAP program is totally self-sufficient, charging \$250 for each client not on public assistance.

3. Prince George's County. The DWI program in Prince George's County is quite similar to Montgomery County's in the specific roles and functions of the various county and State agencies involved in the DWI process. However, Prince George's County's DWI program has one major difference -- the County operates a special treatment facility for individuals convicted of drunk driving: the DWI Treatment Facility, a 60-bed live-in facility under the operational control of the County's Department of Corrections. The operational highlights of the DWI Treatment Facility are as follows:

- Processes referrals from both the District and Circuit Courts, and accepts referrals from other counties in the State.
- DWI defendants referred to this Facility are given jail terms for up to 18 months, with all but 7, 14, 21, or 28 days suspended. Also the defendants are placed on probation for at least one year.
- The actual jail time (7, 14, 21 or 28 days) is served at the DWI Treatment Facility. Those who are employed are permitted to leave the facility during the work day, but all must sleep at the facility.
- While at the DWI Treatment Facility, the individual receives an in-depth alcohol assessment, supervised alcohol treatment during the evenings and on weekends for the period of the stay, and an after-care treatment plan to be continued by the individual during the period of probation. All treatment in the facility is conducted by the staff of the County's Health Department.
- Approximately 20% are first-time DWI offenders. Half of the clients at the facility are there for a period of 7 days.
- The facility cost \$1.3 million to construct and currently has a permanent staff of 11 from the Department of Corrections. The Health Department maintains a full-time staff of two at the facility and provides an additional 131 hours per week of treatment staff.
- The cost to those individuals who are able to pay is approximately \$34 per day or \$237 for each seven-day period.
- The facility has been in operation since August 2, 1985. As of September 13, 1986, the facility has received 779 referrals, for an average of 13 referrals per week. The facility population on September 15, 1986, was 38.

4. Comparison of Prince George's County's DWI Treatment Facility and Montgomery County's Pre-Release Center's IMPACT program. While the DWI Treatment Facility may appear to be a program similar to the Pre-Release Center's IMPACT program, there are more differences than similarities as illustrated in Table 4 on the next page:

TABLE 4

Comparison of Montgomery County's Pre-Release Center's  
IMPACT Program and Prince George's County's DWI Treatment Facility

<u>Category</u>	<u>IMPACT Program</u>	<u>DWI Treatment Facility</u>
<u>Offender Population</u>	Repeat offenders convicted of a DUI/DWI at least three times in the past five years	Up to 20% are first-time DUI/DWI offenders
<u>Criteria for Acceptance</u>	Must be pre-approved by the Pre-Release Center Director, then sentenced by the court	Sentenced by the court after pre-screening by court's alcohol assessor
<u>Intake Capacity</u>	13 beds (10 male, 3 female) (Currently operating over capacity)	60 beds (50 male, 10 female)
<u>Intensive In-depth Assessment of Alcohol Problem</u>	Completed prior to acceptance into IMPACT program	Completed in first 60 hours after arrival at the Facility
<u>Length of Sentence</u>	Minimum of 60 days with the average 180 days	Maximum of 28 days with the average 14 days
<u>Work Release During Day</u>	Permitted	Permitted
<u>Alcohol Treatment</u>	Supervised treatment designed to be completed during the period client is in IMPACT program. May continue after release	Detailed treatment plan developed and begun at the Facility; however, supervised treatment designed to be completed during client's probation period after release from the Facility
<u>Cost</u>	20% of gross pay up to maximum of \$300 per month, plus \$260 for treatment	\$237/week, up to maximum of \$948 for a four-week sentence--includes treatment.

## VII. OBSERVATIONS AND COMMENTS

**Overview.** This report has attempted to identify the various public and private entities involved in what is generically referred to as the "DWI program". As described in the previous sections of this report, the DWI program incorporates a number of agencies at the Federal, State and local levels and a myriad of laws, policies, regulations, procedures and processes--all directed at reducing the incidents of drunk driving through a "DWI process" which involves the criminal justice system, the administrative licensing system, and various public and private alcohol rehabilitation programs.

In the course of this review, the author was exposed to a number of suggestions on how the DWI process should be modified and improved. Many of these suggestions, together with the opinions of the author, are presented in this section of the report in the form of observations and comments. This format has been deliberately selected in recognition and appreciation of the pervasive, complex, and emotional nature of the DWI issue. In presenting these observations and comments, the author wishes neither to oversimplify the DWI problem nor to denigrate the sincere efforts of the many who are laboring to find a solution.

The observations and comments presented in this section of the report are organized under six major headings:

- General observations
- Federal government involvement
- State government involvement
- County Government involvement
- Law enforcement and criminal justice
- Assessment, education and rehabilitation

### GENERAL OBSERVATIONS

1a. **Observation:** The DWI problem cannot be solved solely through the criminal justice process.

b. **Comments:** The enormity and pervasiveness of the DWI problem, the intricacy and complexity of the DWI criminal justice process, and the legality and social acceptability of responsible drinking and driving all combine to discourage any near-time solutions to the DWI problem.

The government's reaction to the drinking driver menace has been classical--the enactment of legislation which concentrates on the criminal aspects of drinking and driving. Since 1980, there has been a sharp increase in the number of DWI-related laws enacted, laws which address a variety of DUI/DWI countermeasures: minimum drinking age; administrative licensing sanctions for DUI/DWI

offenders and for refusing to submit to a BAC; lower BAC levels for prima facie evidence of drinking impairment; mandatory minimum sanctions; sobriety checkpoints and tests; restrictions on the discretion of prosecutors and judges; and mandatory alcohol education and treatment for DUI/DWI offenders.

Except for the latter legislation on rehabilitation, almost all laws address the criminal justice process or administrative licensing activities.

Concurrent with the proliferation in DWI-related legislation has been a dramatic increase in DUI/DWI arrests. The consequence of this growth in legislation and enforcement efforts has been to aggravate the already full court dockets. The initial impact has been on the District Courts. However, the defense bar's reaction to the new emphasis on DUI/DWI arrests and mandatory minimum sanctions has been to dramatically increase the criminal case docket of the Circuit Court by increasing the number of jury trial demands and appeals.

Accompanying this increased legislative and enforcement activity has been a corresponding increase in public awareness of the need to treat the health aspect of the DWI problem. Thus, public alcohol education and treatment programs were developed or expanded; and the number of private providers grew. Because the principal means of detecting alcohol abusers has been through the enforcement of DUI/DWI laws, those convicted of alcohol-related traffic offenses have become the primary recipients of alcohol education and treatment programs.

Notwithstanding the increase in criminal justice activity, there appears to be no appreciable reduction in the number of alcohol-related traffic arrests. As in other matters relating to the DWI problem, there is an absence of creditable statistics on the effect of any specific law or program on the incidence of driving while under the influence or intoxicated. One oft quoted but unverifiable statistic is that "only one in five hundred to one in two thousand drivers on the road with a BAC greater than .10% are arrested..."\*

2a. Observation: A systems approach to solving the problem of the drinking driver is needed.

b. Comments: Current efforts to find a solution to the problem of reducing the incidents of drinking and driving lack a coordinated and systematic approach. Many of the public agencies and private entities involved in the DWI process lack a sense of integration and an appreciation of their interrelationship. Although each element in the DWI process probably is individually "doing its job", the individual elements are not working as an integrated system. The very complexity of the DWI problem demands that it not be attacked in isolation. The individual authority and

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\*"Final Report of the Presidential Commission on Drunk Driving". Washington, D.C., 1983.

responsibilities of each of the participants in the DWI process must be recognized; however, so also must the interdependence of these same participants be acknowledged if there is to be an effective DWI system.

There is presently not a systematic approach to a solution to the DWI problem in Maryland. Instead, one finds linkages, agreements, understandings and temporary working arrangements. The reason for these artificial props is that no single agency at any level of government has overall responsibility for solving the drinking driver problem. As an example, at the State level the Comprehensive Drinking Driver Program is designed to provide rehabilitation and education services to drivers who have been arrested for a DWI/DUI offense or have evidenced signs of abusing alcohol. Although the program has been in existence for some time, no single agency involved in the program is responsible for its operation. Presently, the program is jointly administered by the Motor Vehicle Administration, the Alcohol Control Administration, and the Division of Parole and Probation, in conjunction with the Maryland State courts. In fiscal year 1985, a Memorandum of Understanding was developed to delineate the responsibilities and services of each of the agencies involved in the program and to provide for a system of planning and a mechanism for exchanging information among the agencies. However, to date the memorandum has not been signed.

The absence of a single entity charged with overall leadership for the drinking driver program is not a recent phenomenon. The State Department of Fiscal Services issued an evaluation report on the State's DWI program in September 1983, which recommended stronger coordination and cooperation among the participants and the formation of an oversight committee.

Another example of agency independence which hinders a coordinated systems approach to the DWI problem is best described by the colloquial expression, "turf"; that is, an agency's perception of its expertise, authority and responsibility. One example of "turf" is the Motor Vehicle Administration's role in the issuance, suspension and revocation of drivers' licenses. Another example of "turf" is the authority and independence of the courts, both in the court's relations with outside agencies and in the relationship between the District and Circuit Courts. Finally, at the County level, "turf" is exemplified in the debate over the qualifications and experience necessary to provide alcohol treatment and rehabilitation. On the one hand there are the para-professionals who are most often recovered alcoholics, while on the other there are the academically trained professional counselors.

In summary, no single part of the DWI process--enforcement, prosecution, adjudication, disposition, rehabilitation--can operate independently of the other parts and be totally effective; nor can one individual element of any part of the process dominate the whole process. What is needed is a systems approach to solving the problem of the drinking driver in which each entity understands and appreciates the interaction and interdependence of its responsibilities with those of the other entities involved in the DWI process; and concentrates on the DWI problem as a whole rather than on its component parts.

(Note: The County has taken a significant step in the direction of developing a systems approach to the DWI problem and in encouraging closer coordination between the various participants in the DWI process. In September 1986, a DWI Consensus Seminar was convened at the joint invitation of the County Executive and the Administrative Judge of the Circuit Court. The seminar brought together over fifty representatives of State and County public agencies, private alcohol treatment service providers, boards and committees, the defense bar, and private and community-based groups who have a direct role or interest in the DWI process. The purpose of the seminar was to develop a shared understanding of the DWI process and to reach a consensus on the relationships among agencies and organizations responsible for making the DWI process work efficiently and effectively. A report on the DWI Consensus Seminar, dated October 1986, was distributed in early December 1986.)

### FEDERAL GOVERNMENT INVOLVEMENT

3a. Observation: Federal government involvement in the DWI problem should be expanded.

b. Comments: Currently, the Federal government's involvement in the problem is primarily in a supportive role, mainly through the National Highway Traffic Safety Administration (NHTSA), the National Transportation Safety Board (NTSB), and the National Institute on Alcohol Abuse and Alcoholism. The efforts of these Federal agencies are primarily in the areas of research, public awareness and public education. In addition, they serve as a clearinghouse for information on national and international efforts to reduce drunk driving. To these ends, Federal agencies sponsor seminars and symposia for governmental agencies, private organizations and academia; fund studies and research projects; and in the case of the NHTSA, administer a program of incentive grants for states that implement specific programs which NHTSA perceives are effective drunk driving countermeasures.

While these efforts are laudable and necessary, there are other areas where Federal government involvement could contribute to the success of state and local anti-drunk driving efforts. One area concerns independent evaluation.

A review of the DWI literature reveals a myriad of laws, programs, and initiatives directed at reducing drunk driving. Many jurisdictions have enacted laws which are directed at drunk drivers, such as legal per se and a minimum drinking age; others have initiated diversionary programs, administrative restrictions, and special programs for DWI first-time offenders. Jurisdictions which enact these laws and adopt these programs usually claim they contribute to the reduction of drunk driving incidents. However, most of these claims cannot be supported by evidence of a rigorous or sophisticated evaluation. Rather, the claims of success are more often simply the product of comparing one year's raw accident count to the previous year's count. Should there be a reduction in accidents from the previous year, the proponents of these laws or programs "feel" such reduction was the result of a specific anti-DWI law or program.

The Federal government has the mandate and funds to sponsor creditable evaluations of these DWI-related laws and programs and to differentiate those which contribute to the reduction of drunk driving incidents from those which sound exciting, but have little or no appreciable impact on the number of DWI incidents.

Another area where Federal government involvement should be expanded is in the area of alcohol rehabilitation and treatment. There are no Federal standards or criteria for alcohol education and treatment services. It would seem appropriate for the Federal government to evaluate the various public and private alcohol rehabilitation and treatment programs and report on their relative quality and effectiveness.

### STATE GOVERNMENT INVOLVEMENT

4a. Observation: The State government must provide more visible direction and leadership in the effort to solve the DWI problem.

b. Comments: As outlined previously, there is a critical need for a systems approach to solving the DWI problem. A necessary first step in that approach is for the Governor to designate a single entity in the State with responsibility and authority to provide direction to and facilitate coordination among the various public organizations and private entities involved in the DWI process.

Historically, the State government has had both a direct and a supportive role in DWI matters. The establishment of drunk driving laws is a State responsibility. State law enforcement agencies, courts and administrative licensing agencies have specific responsibilities in the arrest, prosecution, judgment, and sanctioning of offenders. Also, the State government collects and distributes funds to State and local agencies to carry out alcohol rehabilitation programs, is involved in policy formation, planning and certification of alcohol education and treatment services, and maintains DWI-related records and statistics. Despite this heavy involvement in DWI-related matters, there is no single entity at the State level with the authority and responsibility to bring together the various elements involved in the DWI process. As previously discussed, no single agency is currently responsible for implementing the State's Comprehensive Drinking Driver Program.

Prior to June 30, 1986, an Executive Assistant for Transportation, Public Safety and Correctional Services within the Office of the Governor was responsible for providing support to the Governor's Task Force on the Drinking Driver and for coordinating recommendations from that Task Force. The Task Force and the position of Executive Assistant officially went out of existence on June 30, 1986; however, they had not been very active for the year or two prior to their termination.

Recognizing that the DWI process cuts across the three branches of State government, the next Governor must exert strong, personal leadership in the effort to effectively and efficiently coordinate the activities of the three independent branches to reduce drunk driving. As an initial step, the Governor should designate a single entity in the Executive branch to be responsible for coordinating all DWI-related activities by the three branches of State government and the private sector.

5a. Observation: The State should provide an independent, reliable funding source for DWI-related programs and initiatives.

b. Comments: Prior efforts in the General Assembly to pass legislation which would provide a specific funding source for DWI-related programs and initiatives have been unsuccessful. The most recent attempt was in the 1986 session of the General Assembly when a bill to provide such funding passed the Senate but not the House. This should be corrected with the passage of legislation which will provide dedicated funding from two general sources: offender fees and liquor taxes.

- Offender Fees. Currently, offenders who are not receiving public assistance are required to pay for alcohol education and treatment services. This policy, referred to as "financial self-sufficiency" is appropriate; however, it does not go far enough. Legislation similar to that already in effect in 37 other states should be enacted which would require a specified portion of the fines collected for alcohol-related traffic offenses be pre-designated for DWI-related programs. (In the state of New York under a special program called STOP-DWI, a percentage of the DUI/DWI fines are further allocated to local jurisdictions to fund programs dealing with drunk driving. A March 1985 report on STOP-DWI stated that drunk driving offenders provide \$15 million annually for the support of local DWI-related programs.) Other forms of offender fees would impose an additional surcharge to the regular DUI/DWI fine or, when renewing a driving license, impose a surcharge for each point assessed for a DUI or DWI conviction.
- Liquor taxes. Currently, the State collects millions of dollars in taxes annually on the sale of beer, wine and distilled spirits. One-half of the 9¢ per gallon tax on beer and one-third of the \$1.50 per gallon tax on distilled spirits are returned to the County; however, the State retains all the tax on wine, which is currently 40¢ per gallon. The General Assembly could enact legislation which would designate all or a substantial portion of the tax on wine as a dedicated funding source for State and local DWI-related programs. In FY 86, the State collected \$4,139,175 in taxes on 10,276,712 gallons of wine delivered to retailers.

6a. Observation: The State should encourage more private sector initiatives to reduce the incidents of drinking and driving.

b. Comments: At the Federal level, a national insurance company and the professional associations which represent the distilled spirits industry and the brewery industry provide financial support for public information and education programs directed at reducing drunk driving. As an example, the Allstate Insurance Company provides financial support to the National Commission Against Drunk Driving. The State needs to attract similar assistance from Maryland-based private corporations. Support could take the form of State coordinated funding public information and education campaigns, sponsorship of specific programs to discourage drinking and driving, and financial incentives for participation in alcohol education programs aimed at the prevention of alcohol-related traffic incidents.

One suggested initiative would be directed at teenagers and young adult drivers, two groups with a high percentage of alcohol-related traffic offenses. Under this program, reductions in the automobile insurance premiums for teenage and young adult drivers would be granted to those who successfully complete a rigorous alcohol education program and who do not receive any alcohol-related traffic citations.

7a. Observation: The State should examine the issue of professional certification for alcoholism counselors.

b. Comments: A natural consequence of the increase in drunk driving convictions has been an increase in the number of defendants either entering alcoholism treatment programs voluntarily or under court order.

Current alcoholism treatment programs are primarily in the form of individual or group counseling sessions by "alcoholism counselors". It has only been in the past decade or so that academia has included a concentration on alcoholism in the general therapeutic counseling curricula, especially at the masters level. Up until that time, the para-professional, often a former alcoholic who recovered through AA, was the principal provider of therapeutic counseling to alcoholics. In the course of this examination, it was apparent that a latent friction exists between these two alcoholism counseling groups: the academically trained professional and the recovered alcoholic para-professional.

Recently, the Maryland General Assembly transferred authority to approve alcohol education programs and to certify alcoholism facilities and treatment programs from the Administrative Office of the Courts to the Alcohol Control Administration. However, the State does not certify or license alcoholism counselors.

Within the State, the Maryland Alcoholism Counselor Certification Board (MACCB), a private, non-profit organization, certifies counselors who meet specific requirements and pass oral and written examinations to treat clients with alcohol-related problems. The Certified Alcoholism Counselor (C.A.C.) certificate

issued by the MACCB is neither controlled nor endorsed by the State; however, the State does recognize the certification as a standard of professional competence. Also, some insurance carriers recognize the MACCB certification as a standard for paying third-party claims for alcoholism treatment.

The ambivalent position of the State regarding certification of alcoholism counselors contributes to friction between the academically trained professionals and the "on-the-job" trained para-professionals. While I am not qualified to evaluate whether this rivalry is having an adverse affect on the quality of the alcoholism treatment, it is apparent that the failure to address the issue of professional certification in the area of alcoholism counseling is adversely impacting the relationship between these two groups. Likewise, the absence of State certification of a recognized standard of professionalism in the treatment of alcoholism must certainly erode the confidence of the courts and the public confidence in the efficacy of alcoholism counseling. (Note: The State of New York has, since 1979, issued an alcoholism counselor credential to those who meet specific State-established standards.)

#### COUNTY GOVERNMENT INVOLVEMENT

8a. Observation: The County government must provide more visible direction and leadership in local efforts to solve the DWI problem.

b. Comments: The drinking driver problem is not new; however, it has only been in the last several years that national attention has been focused on the problem, and governments at every level have taken actions to try and find solutions. Montgomery County has certainly been active in the more recent years with such initiatives as the following:

- Creating an Executive Task Force on Drunk Driving which, in 1982, developed 66 recommendations relating to solving the DWI problem;
- Creating the Alcohol and Highway Safety Committee as an on-going body to monitor and facilitate implementation of the Task Force recommendations;
- Supporting the anti-DWI programs of regional organizations, such as the Washington Regional Alcohol Program (WRAP);
- Creating a Substance Abuse Coordinator in the Department of Family Resources;
- Establishing an Alcohol Advisory Council;
- Organizing the Care Center as a clearing house for educational materials on drug and alcohol abuse prevention;

- Increasing instruction in the public schools on substance abuse and the danger of driving and drinking;
- Expanding the capability to provide alcohol education and treatment in the Health Department (now the Department of Addiction, Victim, and Mental Health Services);
- Dramatically increasing the number of DUI/DWI arrests by the County Police.

Notwithstanding the above, there is still much that the County government can do to further the goal of reducing drunk driving. The following are but three suggestions:

- Recognizing that County citizens look to their local officials to solve problems relating to the health and safety of the community, the County government should take a more visibly active role in developing DWI countermeasures. To mold the diverse and legally independent entities involved of the DWI process (enforcement, prosecution, adjudication, disposition and rehabilitation) into an integrated and efficient DWI system, requires an active and highly visible level of coordination. Currently, the County's DWI coordination element is buried in a subactivity of the Department of Family Resources. Despite the aggressive efforts of this coordinating element, there simply is not enough exposure or clout. It is necessary to elevate coordination to the level and visibility of the Office of Chief Executive, especially when one considers the number of independent State agencies which are involved. Establishing the DWI coordinating element in the Executive offices would deliver a clear message to the State components of the DWI process, especially the legislature and judiciary, that the County government is serious about changing the DWI "process" to a more efficient and effective DWI "system".
- The County Council must likewise take a more active personal role in the efforts to solve the DWI problem. Currently, Council is represented by an ex-officio member on the Alcohol and Highway Safety Committee. However, this appears to be the limit of the Council's visible efforts in the DWI program. With the exceptions of appearances before the Maryland Senate and House Judiciary Committees by the above Councilmember and a proclamation by the Council, the Council has not taken a position on the several alcohol-related bills that have come before the legislature in recent sessions of the Maryland General Assembly.
- The County Council should make a highly visible and positive statement of support for DWI countermeasures while at the same time providing a County-developed funding source for DWI-related programs. The Council should designate a percentage of the revenue generated by the County's Department of Liquor Control to fund County programs and initiatives dealing with drunk driving. The

County is periodically criticized for a perceived duplicity: controlling a monopoly liquor business and voicing support for anti-alcohol programs. Without getting involved in the polemics which surround the issue of County control of alcoholic beverages, this report strongly suggests that designation by the Council of a portion of the revenue generated by the Department of Liquor Control to DWI countermeasures would contribute greatly to reducing the emotional aspects of this controversy. (Note: There is precedent for Council designation of revenue to a specific program. In 1982, the Council, acting under authority of a State statute, authorized an additional charge of \$5 for every marriage license and designated the additional fees to be used in funding battered spouse shelters and domestic violence programs. In September 1986, a Council resolution increased the amount to \$15 for every marriage license, designating that the proceeds be used for funding domestic violence programs.)

#### LAW ENFORCEMENT AND CRIMINAL JUSTICE

9a. Observation. Enforcement agencies should continue their current emphasis on arresting DWI offenders.

b. Comments. Beginning in 1981, the number of DWI arrests by the County Police increased annually. By the end of 1985, the number of DWI arrests per year was five times the average number of arrests for the years 1974 through 1980.

The increase in DWI arrests had a direct impact on the case load of the State's Attorney and the courts. The impact was initially on the District Court, but soon was felt at the Circuit Court as the number of jury demands and appeals for DUI/DWI offenses increased. In an attempt to alleviate this increased case load on the criminal justice system, it has been suggested that special measures such as the following be adopted: the use of a Stet docket, various diversionary programs, increased use of plea bargaining, and even decriminalizing alcohol-related traffic offenses. Currently, none of these appear to be under serious consideration by either the State or the County.

Interestingly, one does not hear any suggestion that the enforcement effort be reduced as a means of reducing the pressure on the courts. On the contrary, there appears to be a strong public awareness of the drinking driver problem and support for a strong enforcement effort.

A recent research study sponsored by the Insurance Institute for Highway Safety compared counties to determine the extent to which sobriety checkpoints affected public perceptions of the enforcement of drunk driving laws. Montgomery County, with an active, publicized checkpoint program dating back to 1981, was compared to Fairfax County, Virginia, which had rarely used sobriety checkpoints. The study revealed that, although Fairfax County had a higher drunk driving arrest rate than Montgomery County, there was a

higher public awareness of drunk driving activities in Montgomery County. Also, the same study confirmed that more residents of both counties identified Montgomery as the locality with the higher likelihood of a DWI arrest.\*

While there is no comparable study which evaluates the relationship of DWI arrests with the incidents of alcohol-related traffic accidents, there appears to be ample evidence to support the conclusion that a program of highly visible and publicized police activities, especially the use of sobriety checkpoints, creates a higher awareness on the part of the public of the risk and likelihood of apprehension when driving drunk.

10a. Observation: Legislation should be enacted to restrict the prosecutor's charging discretion in alcohol-related traffic offenses.

b. Comments: Some states have enacted legislation which restricts or prohibits the prosecutor's ability to substitute a drunk driving charge with some lesser, non-alcohol related traffic offense, or to dismiss or not file the drunk driving charge in the first place. The rationale behind these laws is that prosecutors should not have the discretion to either divert drunk drivers from going to trial through the use of diversionary programs, such as the Stet docket, or to use plea bargaining to reduce drunk driving offenses.

As described earlier in the report, the State's Attorney has rarely used either the Stet docket or the other diversionary programs (except for Alternative Community Services) in DUI/DWI cases. Also, plea bargaining appears to be used only when there is insufficient evidence to prove the cited offense.

Among the arguments for permitting the prosecutor's wide discretion in charging are: diversionary programs help reduce the prosecutor's and the court's caseload; such programs merely anticipate the fact that judges usually do not impose severe sanctions on DUI/DWI first-time offenders; and diversionary programs enable authorities to get drunk drivers into treatment faster. To counter these arguments, the following reasons are usually cited for restricting the prosecutor's charging discretion:

- With discretionary programs, there is no record of the actual alcohol-related traffic offense; thus, a subsequent alcohol-related traffic offense becomes the "first" one recorded.
- Such programs weaken the public's perception that if you drink and drive you are subject to criminal prosecution and punishment.

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\*"Deterrent Effects of Roadblocks on Drinking and Driving". Insurance Institute for Highway Safety, Washington, D.C., 1984.

- Diversionary programs give the prosecutor rather than the judge the power to determine the guilt or innocence of the defendant and the selection of sanctions. Thus, without a trial the offender avoids the full range of sanctions available to the judge which are not available to the prosecutor.
- The offender escapes all administrative sanctions, especially the imposition of points and the loss of the driver's license. Also, the offender's automobile insurance company is not informed of the driving offense.

Quoted below is a pertinent excerpt from a recent assessment of the restriction of charging discretion by the Criminal Justice Section of the American Bar Association.

*"The need for appropriate negotiations in the criminal justice system must be recognized. However, plea negotiation which results in convictions of lesser, non-alcohol related charges is not appropriate, even if it is justified on the basis of relieving court congestion and reducing the number of cases pending. The adverse effects on the highway safety process, specifically the failure to impose appropriate sanctions and the lack of a driving record that would identify the risk the offender poses, should he or she be arrested subsequently, outweigh the time and expense saved by these charge reductions."\**

It should be recognized, however, that plea negotiation has a legitimate function in the broad spectrum of criminal prosecutions of which alcohol-related traffic offenses are but a part. Specifically, the following standards for plea negotiation have been recommended by the Criminal Justice Section of the American Bar Association in a recent publication:

*"The prosecutor should determine what charges should be filed.*

*"A reduction or dismissal of the charge is appropriate when it would not result in a substantial change in the defendant's sentence; it is necessary to obtain the testimony of a material witness; or, there is insufficient evidence to prove the prosecution's case.*

*"If plea negotiation occurs, then the original charge and the reasons for the plea negotiation should be placed on the record, and there should be a system to ensure that the record is available at future proceedings that involve the defendant.*

*"When a drunk driving charge results in a disposition involving a lesser, non-alcohol related offense (such as reckless driving) as a result of plea bargaining, that lesser offense should be identified on the driver's record as alcohol related."\**

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\*"Drunk Driving Laws and Enforcement - An Assessment of Effectiveness". American Bar Association: Criminal Justice Section, February, 1986.

11a. Observation: Judges need to become more involved in the search for improvements in the DWI criminal justice process and for solutions to the DWI problem.

b. Comments. In the course of reviewing the DWI process, it became apparent that judges occupy the pivotal position. It is in the courts where the full impact of the increased enforcement efforts are felt; where the motivation to change behavioral drinking and driving habits is strongest; and where the public appears to draw its conclusions (actual or perceived) as to the success or failure of the anti-DWI efforts.

Judges have been criticized for being soft on drunk drivers; for not using the full weight of the law and the full range of sanctions to punish DWI offenders; and, in general, for failing to bring the certainty, severity and swiftness of the law fully to bear on drunk drivers. Published records of judicial decisions and dispositions have been criticized and legislatures in some states have reacted to this public criticism by enacting laws which either reduce or eliminate judicial discretion in sentencing DWI offenders.

In some ways, judges have brought this criticism and the resulting legislation upon themselves. Judges traditionally do not publicly defend their judgments and choice of dispositions. Thus, those who criticize judicial actions are relatively free from counter arguments. Also, as a group, judges do not have a reputation for coming forth with program initiatives, relying instead on their interpretation and application of the scope and limits of the law to affect programs. Finally, because judges are careful to preserve their impartiality so as not to endanger their qualification for hearing cases, they have traditionally been reluctant to participate in open discussions and symposia on controversial issues.

Legislatures have countered the judges' interpretations by passing various statutes limiting judicial discretion in selecting both the type and severity of sanctions. These statutes usually concern mandatory minimum sentences, prohibition or the use of sanctioning techniques (such as suspending or probating certain offenders) and "per se" laws.

Judges have not been enthusiastic supporters of these laws. As an example, judges generally oppose mandatory minimum sentences, as does the American Bar Association's Standards for Criminal Justice, because of the lack of convincing evidence concerning any positive effect of mandated minimum sentences on DWI offenders. The Bar Association's opposition is based on the belief that sentencing is a judicial function that should not be usurped by the legislature.

While the debate over the DWI problem has been going on for some time, it has been only recently that the views of the judges have been actively sought. Researchers at the Wharton School were among the first to survey the views of trial judges on DUI/DWI laws.\*

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\*"Trial Judges' Views on Driving Under the Influence Laws". Social Systems Sciences Department, The Wharton School, University of Pennsylvania, 1985.

The researchers surveyed a sample of trial judges who hear DUI/DWI cases in six states: Wisconsin, Georgia, Pennsylvania, Colorado, California and Maryland. The research directors selected Maryland because ". . . it was perceived that enforcement of DUI laws there appears exceptionally stringent." While the survey was not a statistically random sample, the results do reflect the views of the majority of judges in the six states surveyed.

The survey revealed that the judges had definite views regarding DUI/DWI laws which did not always agree with what critics of the courts had been saying. The following are highlights from the report of the Wharton School's survey:

- Judges felt that present DUI/DWI laws overstress the legal objective of retribution and underemphasize the objectives of rehabilitation and deterrence.
- As a group, the judges were not sure whether the various rehabilitation programs were working or which ones worked best.
- There should be more effective methods of screening, referral and treatment for DUI/DWI offenders.
- The severity of available penalties for DUI/DWI offenses should be increased.
- While no one knows what disposition or combination of dispositions deters DUI/DWI, fines, rehabilitation and educational programs, and license suspension/revocation were considered useful dispositions by judges surveyed for first-time offenders. For repeat offenders, the same surveyed judges considered fines, license suspension/revocation and mandatory jail sentences as useful dispositions.
- While the judges had mixed views on mandatory sentencing, the survey concluded that such legislation should incorporate a wide range of sentencing options and flexible judicial discretion. To quote the report, "...trust the judges more rather than less."

During interviews with individuals familiar with the DWI process, to include judges of the District and Circuit Courts in Montgomery and adjacent counties, several initiatives were presented which would favorably impact on the criminal justice system without jeopardizing the defendants' right to due process. Five of these initiatives are presented below:

- Abolish de novo trials. Currently, all DUI/DWI convictions in the District Court may be appealed to the Circuit Court where the appeal is heard de novo; that is, not on the record. A de novo trial considers the matter anew as if there were no original trial, conviction and disposition. While maintaining the fundamental right of an individual to appeal a conviction to a higher court, such appeal trials should not be de novo. De novo appeals

were included in the 1971 District Court Act to protect the citizens from the decisions of what was then a variety of lower courts, many of which had non-lawyer and part-time judges. It appears that the de novo appeal provision was meant to be temporary until the District Courts could "mature" and produce a high quality of justice and quality transcripts from which appeals "on the record" could be heard". Unfortunately, the legislature has allowed the maturing process to last 15 years. It appears that is time to recognize the high quality of the Maryland District Courts and its 90 judges and the high quality of their transcripts. Accordingly, appeals from the District Court to the Circuit Court should be "on the record" and not de novo.

- Institute jury trials at the District Court. There is no fundamental rule of judicial proceedings that prevent jury trials in the District Court. A change in the Maryland Code could institute such a procedure. Currently, several states use juries at the District Court level. For example, Massachusetts uses six-person juries. The use of juries would eliminate long delays while cases are transferred to the Circuit Court, would provide for speedier case resolution, would make better use of witness and attorney time, and would reduce expenditures for police appearance at Circuit Court jury trials.
- District Court decisions should not be appealed to the Circuit Court. Again, the use of the Circuit Court (a trial court) to hear appeals of the District Court (also a trial court) is not a fundamental rule of court doctrine. It was set up that way when the District Court system was established in 1971. Appeals from the District Court should be handled like appeals from the Circuit Court; that is, go to the Court of Special Appeals (or Court of Appeals if that Court wishes to exercise its prerogative) where a panel of judges would sit for those appeals they chose to hear.
- Standardize disposition for first-time offenders. In cases involving first-time DUI/DWI offenders, where there are no other issues involved (bodily harm, suspended/revoked license, unregistered vehicle, etc.), the courts disposition, especially the use of probation before judgment (PBJ), should be standardized. Under the terms of the probation, the court should include any fines, restitution to victims or other conditions (such as prohibition from drinking and/or driving). The statutory provisions of the PBJ include mandatory participation in alcohol rehabilitation programs; consequently the defendant should be able to be placed in a rehabilitation program sooner.
- Establish tighter guidelines for continuances. Currently, the Rules of Procedure include generous guidelines to guarantee the defendants' right to counsel. However, as generous as these guidelines are, the courts often allow

additional continuances. An initial continuance should be allowed to the defendant to find counsel. However, any subsequent continuance should be limited to the gravest circumstances. Currently, second and subsequent continuances are being granted for a variety of reasons (defendant waited too long to look for counsel; the counsel who was retained is overcommitted; or the defendant has not paid the counsel thus the counsel wants a continuance so a fee can be collected.)

In summary, judges do occupy a pivotal position in the DWI process. Their views, experience and judgments are critical in any effort to improve the criminal justice process for DUI/DWI offenders. If a workable solution to the overall problem of the drinking driver is ever to be found, it will have to include contributions from the judiciary.

### ALCOHOL ASSESSMENT, EDUCATION AND REHABILITATION

12a. Observation: Alcohol screening and assessment techniques should be improved.

b. Comments: Currently, screenings and assessments to determine the degree of alcohol dependence are performed by public health personnel, private providers, and, occasionally, by DWI Monitors. These alcohol screenings and assessments are usually initiated because the individual received a DUI/DWI citation. The sole purpose of these screenings and assessments are to provide the courts information as to whether the DUI/DWI offender falls into the category of "social" or "problem" drinker.

On its face value, this categorization appears to be rather useless in light of the overwhelming scientific information that DUI/DWI offenders do not fall into two discrete categories, but rather, fall anywhere along the continuum from first-time drinker to seasoned alcoholic. However, there are more serious reasons to question the current alcohol screening and assessment techniques.

First, the testing device is flawed. County therapeutic counselors and private providers use the MAST (Michigan Alcoholism Screening Test) diagnostic test and a brief interview to determine whether the client is a "social" or "problem" drinker. The MAST test has been in general use for over a decade and is well known to the defense bar. Because it is designed to be a self-reporting questionnaire, unverified by any independent corroborating information, its reliability is highly questionable. Other diagnostic tests which are used elsewhere appear more reliable. One, the Mortimer-Filkins Test, involves both a written test and an oral interview. Although the Mortimer-Filkins Test takes longer to administer, it appears that it produces a more accurate evaluation as to the quantity and frequency of alcohol intake by the defendant.

Second, the results of alcohol screenings and assessments are too important not to be accomplished in a more thorough and deliberate manner. Currently, the court considers the results of

the rapid alcohol screening when imposing a package of dispositions. For defendants assessed to be "social" drinkers, one disposition will undoubtedly include a six-session alcohol education program conducted by the MVA. For those assessed to be "problem" drinkers, disposition includes a six-session alcohol education program and a 20-session alcohol treatment program, both under the control of the County's mental health agency.

Finally, screening and assessment for alcohol dependency of DUI/DWI offenders is an opportunity whose value cannot be over-emphasized and should not be missed. There is general agreement that individuals with a severe dependency for alcohol can go undetected in the work place, in society, and even in the home over a long period of time. The extent of the alcohol problem in some individuals can go undiscovered until it manifests itself in severe medical problems such as cirrhosis of the liver or brain damage. The opportunity to evaluate the extent of alcohol dependency in the large cross section of the population who are arrested for DUI/DWI offenses should not be wasted by a hurried screening and assessment process which uses a flawed diagnostic test.

In summary, screening and assessment techniques should be improved, to include using a diagnostic test other than the MAST. Mental health therapeutic counselors and private providers should work together to select an evaluation technique which provides the clients and courts with a more accurate and reliable alcohol assessment. Finally, DWI Monitors should not be involved in performing screenings and assessments as they are not trained in this area.

13a. Observation: DUI/DWI alcohol education and treatment programs require evaluation as to their effectiveness.

b. Comments: In recent years, problem drinking has come to be looked upon more as a health problem than a crime. This in turn has led to a movement to treat rather than punish drunkenness. In the instance of drinking and driving, this has resulted in health programs becoming part of most court dispositions for convicted drunk drivers. With rare exception, every DUI/DWI defendant participates in an alcohol education and/or alcohol treatment program. Some individuals voluntarily enroll in alcohol education courses and treatment programs with private providers prior to their scheduled trial date.

Few of these court-referred alcohol education and treatment services are conducted in hospital settings, operating mostly in non-residential, private facilities or in public clinics on an out-patient basis. Rehabilitation programs fall into one of two categories: education or didactic, and group therapy. The didactic style is used for "social" drinkers, while "problem" drinkers are exposed to both instructional sessions and group therapy.

There appears to be no consensus that the health approach with its education and treatment programs really works. According to a 1985 publication of the National Highway Traffic Safety Administration, "... evaluation of treatment programs for problem drinkers and alcoholics has proven to be a difficult process, with considerable controversy and relatively few, carefully controlled research studies."\* This is unfortunate when one considers that nationally, thousands of DUI/DWI offenders participate in these programs either voluntarily or by court order with the expectation of the public that such participation will modify future drinking and driving habits of the participants. If we cannot be reasonably sure that these programs are helping the "social" or "problem" drinkers, we are wasting time and money, and even worse, deluding ourselves that we are changing the behavior of convicted drunk drivers.

As stated in a previous observation, the Federal government should intensify its efforts in sponsoring creditable evaluations of alcohol education, treatment and rehabilitation programs. The law enforcement agencies are identifying DUI/DWI offenders and the justice system is motivating them to participate in alcohol rehabilitation programs. We should at least be using rehabilitation programs and treatment services that have some reasonable assurance of success.

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\*"Alcohol and Highway Safety 1984: A Review of the State of the Knowledge". National Highway Traffic Safety Administration, Department of Transportation, 1985.

### VIII. AGENCY COMMENTS

Before submitting this report to the County Council, a draft copy was sent to the Chief Administrative Officer and appropriate governmental agencies. Oral and written comments were received from many of these agencies. Comments of a factual/technical nature have been included in this final report. Other pertinent comments are presented below in their entirety.

#### MEMORANDUM

December 15, 1986

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight  
FROM: Lewis T. Roberts, Chief Administrative Officer  
SUBJECT: OLO Report #86-2: A Description of the DWI Program and An Evaluation of the DWI Process in Montgomery County

Thank you for the opportunity to comment on OLO Report #86-2. The report maintains your continuing standard for excellence. Its comprehensive nature will certainly be a useful resource as the County seeks to improve how the community addresses the DWI problem.

The report clearly indicates that government as a whole has done much in recent years to address the DWI problem. However, your observation that "a systems approach to solving the problem of the drunk driver is needed" is also clearly accurate. Governmental entities at the Federal, State, and local levels must act in concert with each other and the community in order that the most significant impact on reducing the problem be made. As you point out, the County has taken a significant step in developing a system approach by holding a DWI Consensus Seminar convened on September 20, 1986 by then County Executive Gilchrist and Circuit Court Chief Judge John J. Mitchell. A copy of the seminar report is included for your information.

Attached for your consideration are comments received from the Departments of Police, Health, Corrections and Rehabilitation, Addiction, Victim, and Mental Health Services, OMB, and Family Resources. Should you have any questions, please do not hesitate to contact me.

LTR:psa

M E M O R A N D U M

December 12, 1986

TO: Keith E. Kolodgie, Asst. to the Chief Administrative Officer

FROM: Jacqueline H. Rogers, Director  
Office of Management & Budget *JHR*

SUBJECT: OLO #86-2: A Description of the DWI Program and an Evaluation of the DWI Process in Montgomery County

This memorandum is in response to your November 16 request for comments on Mr. Mansinne's draft report on the above subject.

The Office of Management and Budget wishes to comment on one suggestion contained in the report. Specifically, on page 57, the observation is made that the County government must provide more visible direction and leadership in local efforts to reduce drunk driving. In the provision of this, Mr. Mansinne suggests having the Council "designate a percentage of the revenues generated by the County's Department of Liquor Control to fund County programs and initiatives dealing with drunk driving."

Except for the revenues of Special Funds (eg., Liquor, Parking, etc.), the County Government has minimized associating revenues with particular programs. Generally, in Montgomery County, all revenues go to fund all programs.

Opposition to dedicating revenues is based on two main concerns. First, once a particular revenue is tapped, requests for tapping other programs materialize, in an effort to latch on to what appears to be "available" funds.

Secondly, the real need for funds each year can become very unclear if there is an on-going stream of revenues. Has a specific need for resources been clearly identified and justified? Are programs designed just to meet the available funds? What happens if there is a revenue failure? If the Executive and the Council have identified a need for resources in a particular area, and have determined that a lack of resources exists, the appropriate response to this identified need would be to pursue funding through normal budgetary channels, providing appropriate justifications, statement of objectives and strategies for accomplishing these objectives.

In the specific DWI issue, the alcoholism program has not been identified in the budgetary process for the past several years as requiring additional funds. If there is a need for additional resources, the current budget process offers several opportunities to indicate such a need.

29940

M E M O R A N D U M

December 12, 1986

TO: Keith Kolodgie, Assistant To The Chief Administrative Officer

VIA: *for* Pete Holt, Acting-Director, *DAC*  
Department of Addiction, Victim, and Mental Health Services

FROM: Herbert W. Winstead, *HW* Chief,  
Alcoholism Programs

SUBJECT: Comments on OLO Report #86-2, A Description of the D.W.I. Program and Evaluation of the D.W.I. Process in Montgomery County

I would first like to state that this report is the best I have seen on this subject. One can tell that a great deal of time and effort was expended gathering this information.

I would like to call to your attention items 31 and 32, Alcoholism Advisory Council (A.A.C.) It would appear from the report that the Alcoholism Advisory Council works more closely with the Department of Family Resources than the Department of Addiction, Victim, and Mental Health Services. This is not the case. The relationship between the Alcoholism Advisory Council and the Alcoholism Programs (The Alcoholism Programs is in the Department of Addiction, Victim, and Mental Health Services) has always been very strong and very close. You will note that the County Council 1978 Charter 23 states that the Health Officer, Division Director of Adult and Geriatric Services and the Director of the Alcoholism Program are ex-officio members of the Alcoholism Advisory Council. It only requires a representative from the Office of Family Resources. The Alcoholism Advisory Council is also charged with advising and reporting annually to the Health Officer and the Alcoholism Programs. As you know, since the creation of the new Department, the role of the Health Officer and his staff will transfer to the Department of Addiction, Victim, and Mental Health Services.

In item 31, it states that the Substance Abuse Coordinator located within the Department of Family Resources, "is responsible for coordinating services in the areas of substance abuse treatment." This is incorrect. They have been coordinating prevention and public information, but not treatment.

In regard to the Alcohol Assessment, Education and Rehabilitation on page 63, 12A, "Observation: Alcohol screening and assessments techniques should be improved". We agree whole heartedly with the assessment of this problem. The problem the County Alcoholism Programs has is that the State places conditions on the grant money (almost one-half million dollars) they provide to us. Part of those conditions is that we must use the MAST test and that we must have our counselors in the Courts. We would much rather do a more in-depth assessment in our offices than do a hurried up assessment in the court! I might add for purposes of clarity that the Alcoholism Programs staff therapeutic counselors are not mental health counselors.

One other point is that the D.W.I. monitors no longer do screenings or assessments.

As I stated in the beginning, I feel this is a well done and important report and would like to suggest that a representative from each of the components involved meet and go over this report page by page.

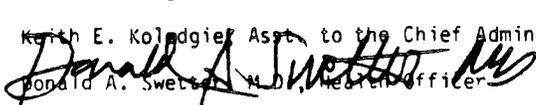
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M E M O R A N D U M

December 3, 1986

TO: Andrew Mansinne, Jr., Director  
Office of Legislative Oversight

VIA: Keith E. Kolodziej, Asst. to the Chief Administrative Officer

FROM:   
Donald A. Swett, Health Officer

SUBJECT: OLO Report #86-2, A Description of the DWI Program and An Evaluation of the DWI Process in Montgomery County

I have personally reviewed the above report and find it to be well done and comprehensive in its description. As Health Officer, I became familiar with DWI process during my first year of county service. It was already (1984) undergoing changes just as different segments of the alcoholism treatment program were itself being reshaped to meet new needs. I saw first hand a lot of good that came from timely and forceful interventions imposed by a fair court system. There was an occasional slip up. There was a time when court ordered treatment was diverted away from Health Department providers to private contract providers. This process sharpened both kinds of providers and led to more services being available.

Whether a better coordinative role would improve services to the individual at fault, is not of primary concern. What is important is that more money be spent on the prevention of the alcoholic habit among Maryland citizens. It is abhorrent that revenues must be procured through the County's role as liquor purveyor to its citizens, and then after the fact, there is concern over the consequences of the abuse of the same product. Since societies will have their own preferences for specific legal intoxicants, there is not much possibility that alcohol will go away, but adequate warning, education, and enforcement are essential parts of the same process to drive home the message that Montgomery County is tough on drunk drivers. The slaughter and destruction of people and personalities are still very apparent despite good, solid, substantial investment in DWI programs. More effort must be focused on alternatives to drinking for people of all ages, and negative incentives must continue to be applied.

Thank you for the opportunity to comment.

DAS:daa

November 25, 1986

MEMORANDUM

TO: Keith E. Kolodgie  
Assistant Chief Administrative Officer

FROM: Bernard D. Crooke *B. D. Crooke*  
Chief of Police

SUBJECT: OLO #86-2: A Description of the DWI Program and  
an Evaluation of the DWI Process in Montgomery County

Mr. Andrew Mansinne, Director, Office of Legislative Oversight, has authored an excellent report of the DWI program/process in Montgomery County, Maryland. One of the general observations of the report recommends a continued emphasis on arresting DWI offenders. The Department of Police had made a significant commitment to increasing the identification and arrest of DWI offenders. Although the numbers of DWI arrests are slightly lower in 1986 to date than 1985, the department is planning to set objectives in CY 87 for a greater emphasis of highly visible and publicized police activities in apprehending operators driving drunk.

I agree the drinking driver is a complex problem and the department will continue to cooperate with all interested parties in addressing this most important issue.

M E M O R A N D U M

TO: Lewis T. Roberts, Chief Administrative Officer

FROM: ~~Charles L. Short~~, Director, Department of Family Resources

SUBJECT: Comments on OLO #86-2: A Description of the DWI Program and An Evaluation of the DWI Process in Montgomery County

As per your request, I am pleased to transmit to you the staff comments on the DRAFT OLO Report #86-2. Included in these comments are the views of the Chairman of the Alcohol and Highway Safety Committee, John Moulden. The comment on designating all liquor taxes does not reflect the view of the Department, but the view of the Committee.

In addition I am enclosing for your information a copy of the Report on the DWI Consensus Seminar held in October. This report contains views similar to those set forth by Mr. Mansinne, particularly with respect to the recognition of the DWI problem as being a health as well as a criminal issue.

CLC:ds

Enclosure

MEMORANDUM

TO: Chuck Short, Director, Department of Family Resources.

VIA: Bennett Connelly, Chief, Division of Children & Youth *BC*

FROM: Carol Giannini *CG* Substance Abuse Coordinator

SUBJECT: Comments on OLO #86-2: A Description of the DWI Program and An Evaluation of the DWI Process in Montgomery County

Comments on the draft are divided in two sections for ease of reference:  
1) Technical corrections; and 2) General Observations.

I. Technical corrections

- a.) Page 5, last paragraph. "The Task Force Report, issued in May 1982 contained 64 recommendations." Note: There were 66 recommendations.
- b.) Page 22, last paragraph. "Located within the Department's Division on Children and Youth, the Substance Abuse Coordinator is responsible for coordinating services in the area of substance abuse treatment, prevention and public information." Note: Should now read "area of substance abuse treatment, prevention, public information and enforcement."
- c.) Page 23, first paragraph. The Care Center is no longer an acronym and therefore the words "Community Awareness Resource Exchange" should be removed. Also it is operated by Community Awareness Project, Inc. (not "County").
- d.) Page 23, third paragraph. WRAP is a regional coalition of business, government and community leaders designed to eliminate drinking and driving in the Washington Metropolitan Area. WRAP is a public education, coordinating and advocacy organization. WRAP has government representation from 10 jurisdictions in Maryland, Northern Virginia and the District of Columbia.
- e.) Page 26, first bullet. SADD in Montgomery County is not a member of the national SADD which stands for Students Against Drinking and Driving. Montgomery County SADD is currently being provided adult leadership from a community-based agency, Counseling Services and Systems, Inc. There is an adult advisory board which includes MCPS, Police Department, Department of Family Resources, MADD, the Care Center and parents.

II. General Observations

This study presents the most comprehensive picture of the County's DWI process which has ever been accomplished. In addition the proposed observations and comments reflect the trends of the DWI problem as it is today (1986). They are worthy of considering implementation at the earliest

possible date, in order to improve our county response to dealing with the problem, and before the public perception that the "response" is either too slow or dysfunctional. This would hurt the deterrent messages being perceived by the public.

However, there are some questions and observations with respect to some of the observations in the OLO Report. These include those raised by John Moulden, Chairman of the Alcohol and Highway Safety Committee:

- a.) Page 52, Observation and Comment. Why is the Federal 408 program not mentioned? It is our understanding that should Maryland come into compliance that retroactive funding could be available. This can be confirmed through NHTSA(National Highway Traffic Safety Administration)\*
- b.) Page 54, Comment - Liquor taxes. The proposed legislation should be to designate all tax on wine as well as beer and distilled spirits be dedicated to funding State and local DWI-related programs.
- c.) Page 57, Comment. There is strong support for this comment that proposes elevating the coordination of DWI to a higher place in County government. This was confirmed at the DWI Consensus Seminar in October 1986.
- d.) Page 64, Comment. There is a national thrust to improve assessment and screening techniques by establishing a central diagnostic screening facility. Could this be considered/included in the comments section? This could be most helpful if undertaken in Montgomery County.

\* Author's response: The Federal 408 program is discussed in Section IV, paragraph 4 (page 7)

M E M O R A N D U M

December 16, 1986

TO: Andy Mansinne, Director  
Office Of Legislative Oversight

FROM: Arthur W. Spengler, Staff Director  
Office of The County Council 

SUBJECT: Report #86-2

Bill Allen and Jennifer Andrews have reviewed the draft of Report #86-2 and I offer the following comments for your consideration:

As a general comment, the report provides a good summary of the "system", or lack thereof. In some places, the use of examples of illustrations might help the reader who is less familiar with the process.

Specific Comments

p. 16 The report states: "Although the Sheriffs Department has authority to make DWI arrests, they do so only in that case instance where the DWI offense presents an immediate threat to public safety." Why is the immediate threat to public safety criteria used before an arrest is made? Is it stipulated in law, policy, procedure, regulation or practice?

- p. 18           What is the derivation of the expenditure information in Table 3? It's possible, but a little difficult to believe, that only \$50,000 was spent on regular and special patrol operations related to DWI. If that's the case, then \$50,000 worth of police patrol time is netting 4,000 - 5,000 DWI arrests per year.
- p. 50           The statement is made that "there appears to be no appreciable reduction in the number of drunk driving incidents". The latest statistics do show a 7% decline in DWI arrests, so if incidents are akin to arrests, there has been a decline. More importantly, however, since only a small percentage of DWI offenders are actually caught, arrests statistics are not necessarily a good indication of the extent or change in the problem. Arrests or incidents are probably only related to the hours of police patrol time dedicated to DWI. The deterrent effect of heightened public awareness and improved patrol checkpoints may be immeasurable but is nevertheless a recognizable phenomenon. It would be a good idea to acknowledge the deterrent effect of recent educational and patrol initiatives.
- p. 50-51        The report discusses the lack of coordination addressing the DWI problem. On page 57, the report does state that DWI coordination responsibilities rest in the Executive's office; however, it also involves the Courts, State's Attorney, and Sheriff each of whom is independent of the Executive. The County should at least have a coordination office with administrative authority to coordinate this and other significant criminal justice issues. There needs to be stronger leadership before real proactive coordination occurs.
- The argument for proactive coordination would be strengthened if there were a few examples of what has happened when there's a lack of coordination. (e.g., not enough prison space, State's Attorney not knowing what initiatives the police are taking, etc.). Furthermore, the need for state-local coordination is evident but not discussed. While there are state-sponsored programs and county programs, no group or person is responsible for assuring consistency and coordination.
- p. 58           There is a recommendation for legislation restricting the State's Attorney's discretion in DWI arrests. However earlier in the report (p. 33-35) the State's Attorney's Office is described as having a reasonable policy toward DWI offenders. The SAO's discretion probably should not be changed, since if they do drop or change the offender's charge, there's generally a valid reason. The courts do not need to be additionally burdened with poor cases. A better approach may be to coordinate the SAO and police so that consistent policies are developed. Close police-prosecutor coordination is essential for the success of any criminal justice initiative involving arrests.

Other

How many Probation Before Judgment (PBJ) cases are subsequently changed because of probation violations? Of those DUI/DWI arrests from 1984 to the present what percentage were repeat offenders? Of those repeat offenders, what percentage were given jail time?

## Glossary of Terms

**Administrative Per Se Law:**

Laws which state that, if a driver's blood alcohol concentration is in excess of a specific level, the State's driver licensing agency may suspend the driver's license via administrative action which is independent of any court action related to a DUI/DWI charge. (Maryland does not have an Administrative Per Se law.)

**BAC:**

Blood Alcohol Concentration; amount of alcohol in the blood stream expressed as a percent. Also referred to as Blood Alcohol Content, Blood Alcohol Level (BAL) or Breath Alcohol Content. In Maryland, the following results of analysis apply (CJP 10-307):

- o BAC .00% to .05%: presumption of no impairment or intoxication.
- o BAC .06% to .07%: no presumption of DUI or DWI, but may be considered with other evidence.
- o BAC .08% to .12%: prima facie evidence of DUI.
- o BAC .13% or more - prima facie evidence of DWI.

**Blood Alcohol Test:**

Any chemical test of breath, blood, urine, or other bodily substance used to determine the concentration of alcohol in the blood. (The arresting police officer may not administer this test CJP 10-304.)

**Breath Testing Device:**

An instrument which scientifically measures the amount of alcohol in the bloodstream by chemical analysis of the breath. Commonly called a Breathalyzer.

**De Novo Trial:**

Trying a matter anew. Same as if an original trial had not been heard before and as if no decision by a court had been previously rendered.

**"Dram Shop" Laws:**

Laws which state that those commercial establishments which dispense alcoholic beverage to intoxicated individuals may be held liable for subsequent injuries caused by such individuals.

**DUI:**

Driving while under the influence of alcohol (TR 21-902(b)).

**DWI:**

Driving while intoxicated (TR 21-902(a)).

**Field Sobriety Test:** A roadside test used by police to help determine if a suspect is impaired. In Montgomery County several tests are administered: one-leg stand, walk and turn, reciting the alphabet, counting forward and backwards, and the horizontal gaze nystagmus.

**Illegal-Per Se Law:** Unlawful in and of itself and not because of some extraneous circumstances. In the context of DUI/DWI, it would be "illegal per se" for a person to operate a motor vehicle with a specified amount of alcohol in the blood. (Maryland does not have an Illegal Per Se law.)

**Implied Consent Law:** A Maryland law (TR 16-205.1) which stipulates that any person who operates a motor vehicle on the highways is presumed to have consented to be chemically tested for alcohol upon request by police or risk license suspension.

**Nolle Prosequi:** A formal entry on the record in open court by the State's Attorney that the case will not be prosecuted further at this time. The State's Attorney must give a reason for the nolle prosequi, but the judge cannot interfere. A case which has been disposed of by "nol pros" can be brought back to court by the filing of new charges. While similar in effect to a dismissal, a "nol pros" disposition retains the arrest on the record until an application to have the record expunged is approved. An application cannot be submitted until three years after the date that the offense was disposed of by "nol pros". However, a traffic offense cannot be expunged.

**PBT:** Preliminary Breath Test: a roadside test by police using a portable breath-alcohol tester to measure a suspect's intoxication level. Results of this test may not be used in Maryland to establish probable cause for arrest.

**Plea Bargaining:** The process by which a prosecutor and a defense attorney agree to reduce a number of charges, or a specific charge, in exchange for a guilty plea to a single or lesser charge by the defendant; for example, reducing a DWI charge to a DUI charge.

**Presumptive Laws:**

Maryland law which states that if a specified level of alcohol is present in a driver's blood, the driver is presumed to have been driving under the influence or intoxicated. However, because the presumption is rebuttable, other evidence can be introduced by the defendant to disprove the allegation.

**Screening:**

A court-directed procedure used to determine a driver's level of involvement with alcohol for purposes of referral to education or treatment programs as appropriate. Usually classified driver as a social or problem drinker.

**STET Docket:**

Procedure whereby prosecution by the State will not proceed against an accused on a particular indictment at that time. The defendant must consent to the steted charge and waive the right to a speedy trial. Also the court must approve. The steted charge can be rescheduled for trial at the request of the State or the defendant.



## INTERVIEWS

Representatives of the following Federal, State, County, and private agencies and entities were interviewed by the author:

### GOVERNMENTAL - FEDERAL

- National Transportation Safety Board  
Alcoholism Program Coordinator
- National Highway Traffic Safety Administration  
Office of Alcohol and State Programs
- National Highway Traffic Safety Administration  
Region III

### GOVERNMENTAL - STATE

- Maryland House Judiciary Committee
- Maryland Department of Fiscal Services
- Executive Assistant to the Governor of Maryland for Transportation, Public Safety, and Correctional Services
- Maryland Department of Public Safety and Correction Services  
Division of Parole and Probation  
DWI Monitor Program
- Maryland Department of Transportation  
Motor Vehicle Administration  
Associate Administrator for Driver Services
- Maryland Department of Transportation  
Motor Vehicle Administration  
Chief Hearing Officer
- Maryland Department of Health and Mental Hygiene  
Alcoholism Control Administration
- Maryland Postmortem Examiner's Commission  
State Toxicologist
- Office of the State's Attorney for Montgomery County
- Chief Judge, District Court of Maryland
- Chief Clerk, District Court of Maryland
- Montgomery County Circuit Court

## INTERVIEWS

- Frederick County Circuit Court
- Prince George's County Circuit Court
- Montgomery County District Court
- Office of the District Public Defender for District No. 6,  
Montgomery County

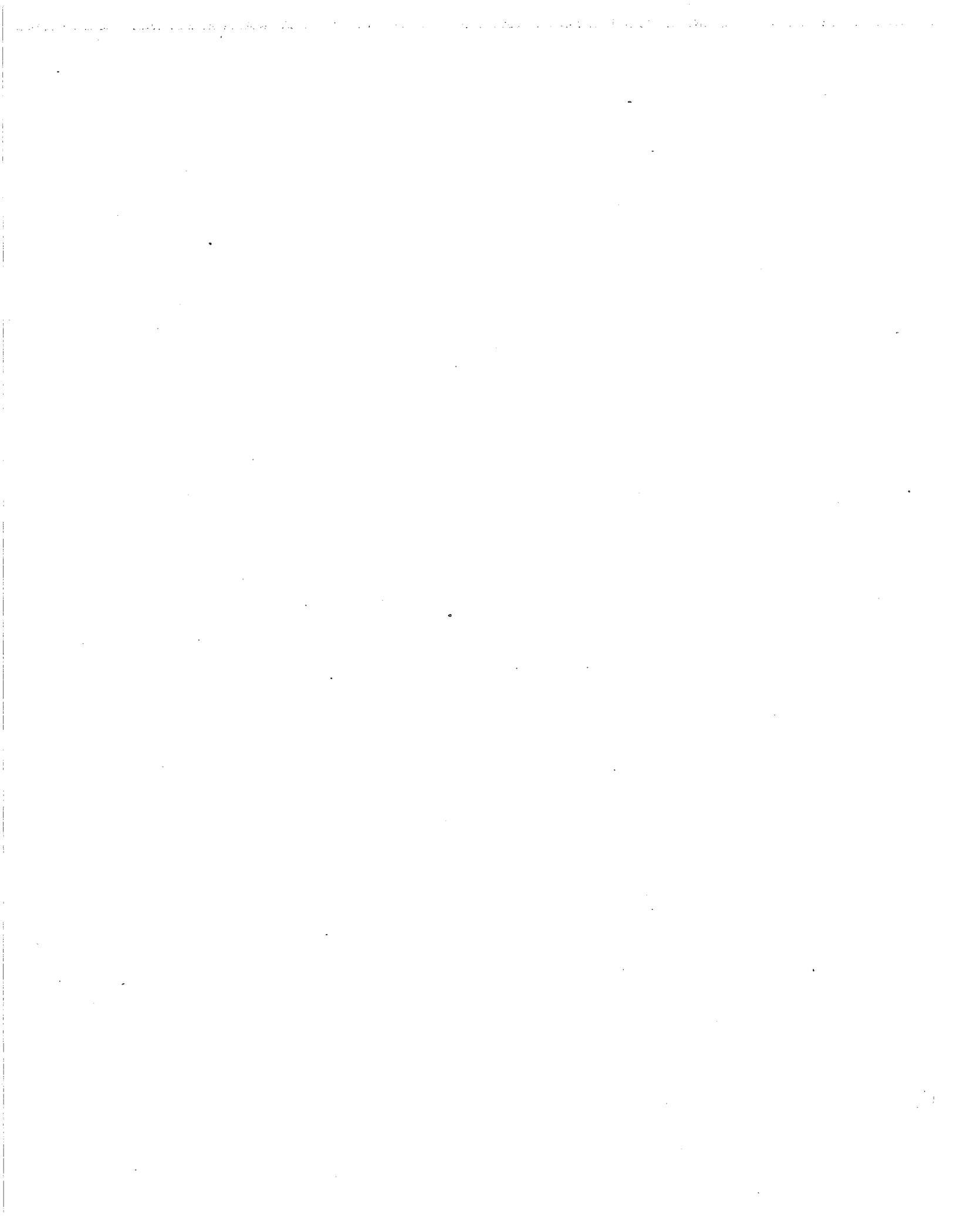
## GOVERNMENTAL - COUNTY

- Montgomery County Public Schools  
Department of Driver, Health, Physical Education and  
Athletics
- Montgomery County Department of Addiction, Victim and Mental Health  
Services
- Montgomery County Department of Corrections and Rehabilitation  
Pre-Release Center  
Alternative Community Service
- Montgomery County Police Department
- Montgomery County Department of Family Resources
- Montgomery County Alcoholism Advisory Council  
Alcohol and Highway Safety Committee
- Montgomery County Criminal Justice Commission
- Montgomery County Alcoholic Beverages Advisory Board
- Arlington County, Virginia Alcohol Safety Action Program (ASAP)
- Fairfax County, Virginia Alcohol Safety Action Program (ASAP)
- Prince George's County Department of Corrections  
DWI Facility
- Washington, D.C. Alcohol and Drug Abuse Services Administration
- Baltimore County Criminal Justice Commission
- Several jurisdictions outside the immediate Washington area

## INTERVIEWS

### PRIVATE

- National Commission Against Drunk Driving
- Insurance Institute for Highway Safety
- Mothers Against Drunk Driving - (MADD)
- Students Against Drunk Driving - (SADD)
- Maryland Alcoholism Counselor Certification Board
- Center for Science in the Public Interest
- National Center for Drunk Driving Control
- Alcoholics Anonymous
- Practitioners and providers
- Defense attorneys
- Citizens



SECTIONS OF THE ANNOTATED CODE OF MARYLAND  
RELATING TO DRINKING AND DRIVING

Article 27, Crimes and Punishments Article

- |           |   |
|-----------|---|
| Sec. 388  | Manslaughter by auto, motorboat, etc.         |
| Sec. 388A | Homicide by motor vehicle while intoxicated   |
| Sec. 639  | Suspension of sentence of intoxicated drivers |
| Sec. 641  | Probation prior to judgment                   |
| Sec. 641A | Suspension of sentence and probation          |

Transportation Article

- |          |   |
|----------|---|
| 16-205   | Suspension and revocation of driver's licence for certain alcohol or drug related offenses            |
| 16-205.1 | Suspension for refusal to submit to chemical test for intoxication - implied consent to chemical test |
| 16-205.2 | Preliminary breath test (PBT)   |
| 16-206   | General authority of MVA to suspend, revoke, or refuse license  |
| 16-208   | Period of suspension; reinstatement of revoked driver's license                                       |
| 16-402   | Points assessed for conviction of offenses involving a vehicle  |
| 16-404   | Effect of accumulated points  |
| 16-405   | Adverse effects on employment by suspension or revocation of driver's license                         |
| 16-407   | Points retained for 2-year period   |
| 21-901.1 | Reckless and negligent driving  |
| 21-902   | Driving while intoxicated, ability impaired, or under the influence                                   |
| 21-903   | Prohibition against consuming an alcoholic beverage while driving                                     |

Transportation Article (Continued)

- 26-202 Power of police officer to arrest a person for driving or attempting to drive while under influence of alcohol or intoxicated
- 27-101 Penalties for first offense of DUI and DWI and for subsequent offense of DUI and DWI within a 3-year period

Courts and Judicial Proceedings Article

- 10-302 Chemical test for intoxication
- 10-303 Time limitation for chemical test
- 10-304 Qualification of person administering chemical test; equipment
- 10-305 Right to select type of test
- 10-306 Admissibility of test results without presence of testimony of technician
- 10-307 Results of test analysis and presumptions; prima facie evidence of alcohol impairment and intoxication
- 10-308 Other evidence of intoxication may be admitted
- 10-309 Refusal to take test is admissible in evidence at trial

Health - General Article

- Subtitle 2 Alcohol Control Administration
- 8-404 Highway Safety Program
- 8-411 Alcohol abuse facilities

Bills Relating to DUI and DWI Passed by  
the Maryland State Legislature  
in the 1981 to 1986 Sessions  
(SB=Senate Bill HB=House Bill)

1981 Session

- SB 493      Selection of chemical test. Prohibits defendant from changing his/her mind about type of test (breath, blood) to be administered and thus exceed 2-hour limit.
- SB 494      Preliminary breath test. Authorizes taking of preliminary breath test in field. Test results not admissible in court.
- SB 495      Point system. Extra points generally allowed for commercial drivers are not permitted if points are for alcohol-related offenses.
- SB 496      Blood Alcohol Content. Reduced from .10 to .08 for driving while under the influence (DUI); and from .15 to .13 for driving while intoxicated (DWI).
- SB 497      Refusal to take BAC test. Penalty changed for license suspension from "not more than 60 days" to "60 days to 6 months".
- SB 498      Probation before judgment (PBJ). MVA allowed to maintain record of PBJ's.

1982 Session

- SB 61      Drinking age. Increases drinking age for beer and light wine from 18 to 21.
- HB 111      Reinstatement of license. Minimum period before driver with revoked license can regain license: 6, 12, and 18 months for first, second and third offenses, respectively.
- HB 161      Limits on PBJ. Prohibits probation before judgment for second and subsequent DWI offenses.

1982 Session (Continued)

- HB 542 Driving record. Prohibits expungement of driving record for DWI offenses for 10 years.
- SB 170 BAC Testing. Provides procedures whereby BAC blood test may be given to unconscious person suspected of DWI.
- SB 349 Penalty. Maximum penalty for negligent manslaughter by motor vehicle increased from 3 to 5 years.
- SB 626 Compulsory BAC testing. Mandatory for any driver suspected of DWI involved in an accident resulting in death.
- SB 696 Driving with a revoked/suspended license. 120-day revocation of motor vehicle registration if vehicle driven by driver with DWI-revoked or suspended license.

1983 Session

- SB 510 Tag suspension. Broadens current MVA authority to suspend registration tags for a first offense of person driving while suspended or revoked.
- SB 513 Chemical test selection. Specifies use of the breath test, except that blood test used if the defendant is unconscious, in a medical facility, or if facilities for a breath test are unavailable.
- SB 514 Second test refusal. Increases penalty for a second or subsequent refusal to take the chemical test from 60 days - 6 months to 120 days - 1 year.
- SB 515 Second probation before judgment. Clarifies intention of 1982 legislation that court cannot place a person on probation for a second or subsequent DUI/DWI violation within five years of previous offense.
- SB 516 DUI point assessment. Increases point assessment from 6 to 8 for a DUI conviction.

1983 Session (Continued)

HB 341 Maximum imprisonment. Increases maximum imprisonment for homicide by motor vehicle while intoxicated from two years to three years.

1984 Session

HB 636 BAC test evidence. BAC test admissible without presence of technician unless testimony of technician is previously requested.

HB 749 BAC test technician at trial. Extends advance notice requirements if defendant wants BAC test technician present.

HB 367 BAC testing. Clarifies the qualifications that a police officer must possess to administer a BAC test.

1985 Session

SB 70 Drinking while driving. Prohibits consumption of alcohol while operating a motor vehicle.

SB 826 Approval of education and treatment programs. Shifts approval authority for private alcohol education and treatment programs from the Administrative Office of the Court to the Department of Health and Mental Hygiene's Alcohol Control Administration.

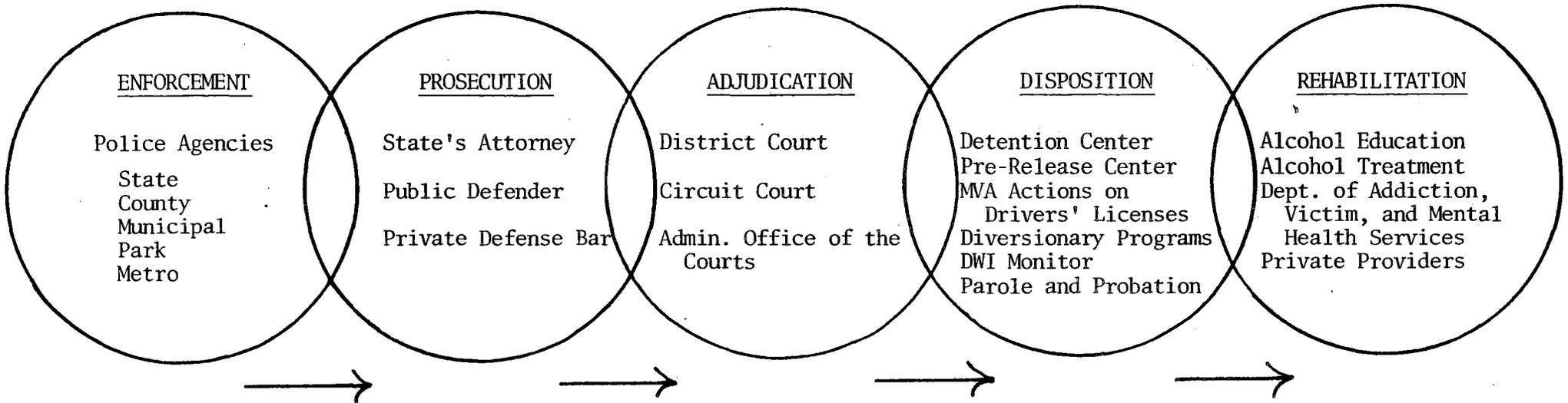
HB 245 Mandatory minimum sentence. Requires minimum sentence of imprisonment for 48 consecutive hours or not less than 80 hours community service for second DWI offense within three years of the first DWI conviction.

HB 1150 MVA education program. Authorizes MVA to conduct driver improvement and alcohol education programs and to collect a fee to cover the cost of such programs.

1986 Session

- SB 85 Refusal to take BAC test admissible in trial.  
Permits the fact that a defendant refused to take the BAC test to be admitted as evidence at trial.
- SB 829 Alcohol restriction on driver's license.  
Specifically authorizes MVA and the Court to impose an alcohol restriction on a driver's license and provides that a BAC test may be administered to determine whether this restriction has been violated.
- HB 756 Juvenile DWI offender. DWI violation by a juvenile must be reported by the Juvenile Court to MVA even if juvenile is not found to be delinquent.

## THE DWI PROCESS



## ENVIRONMENTAL FACTORS

### ● FEDERAL, STATE AND COUNTY LAWS, REGULATIONS AND PROCEDURES

### ● PUBLIC AWARENESS, EDUCATION AND ADVOCACY

- National Highway Traffic Safety Administration
- National Commission Against Drunk Driving
- MCPS
- Alcohol & Highway Safety Committee
- Criminal Justice Commission
- Department of Family Resources
- Alcoholism Advisory Council

- Drug Abuse Advisory Council
- Care Center
- MADD
- SADD
- Maryland Coalition for Better Drunk Driving Laws
- Religious Community
- Alcoholic Beverages Advisory Board

### ● REGULATION, CERTIFICATION AND FUNDING

- Alcohol Control Administration
- Maryland Alcoholism Counselor Certification Board

- Board of Licensing Commissioners
- Office of Management and Budget

