

NEW HAMPSHIRE ALCOHOL SAFETY ACTION PROJECT

✓
ANALYSIS OF THE ADJUDICATION OF
ALCOHOL RELATED TRAFFIC ARRESTS



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ACQUISITIONS

**JUNE 1977
FINAL REPORT**

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**U.S. DEPARTMENT OF TRANSPORTATION
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16. Abstract <p>During the years of ASAP operation in New Hampshire, arrests for operating under the influence of alcohol (DWI) increased almost four fold from the annual rates experienced in the years before the project. This increase in arrests has not adversely affected the adjudication of DWI cases. For example, 89 percent of the persons arrested and arraigned as first offenders in 1976 were found guilty, the same rate as occurred in 1971. Most DWI cases are adjudicated within about one month of the arrest, with this time span having remained relatively stable despite the increased caseload.</p> <p>Of 8,578 persons arrested for DWI in 1976, 1090 had blood alcohol levels below .10 percent and were not arraigned. Of the remainder, 6,789 had been adjudicated as of April 1977 while the rest (699) were outstanding.</p> <p>Of the 6,300 persons charged as first offenders, 31 percent contested the case, with this rate being essentially unchanged over the years. Eighty nine percent of first offenders were found guilty and just under 10 percent appealed. The average fine in 1976 first offense cases was \$160, a figure that has been increasing gradually over the years. The most common license revocation period was 60 days followed by a variable length revocation associated with court referral to the ASAP.</p> <p>Comparisons of the individual courts in the system shows variation in first offense conviction rates from 66 to 100 percent, a range of average fines from \$78 to \$215 and a range of appeal rates from zero to 29 percent.</p>			
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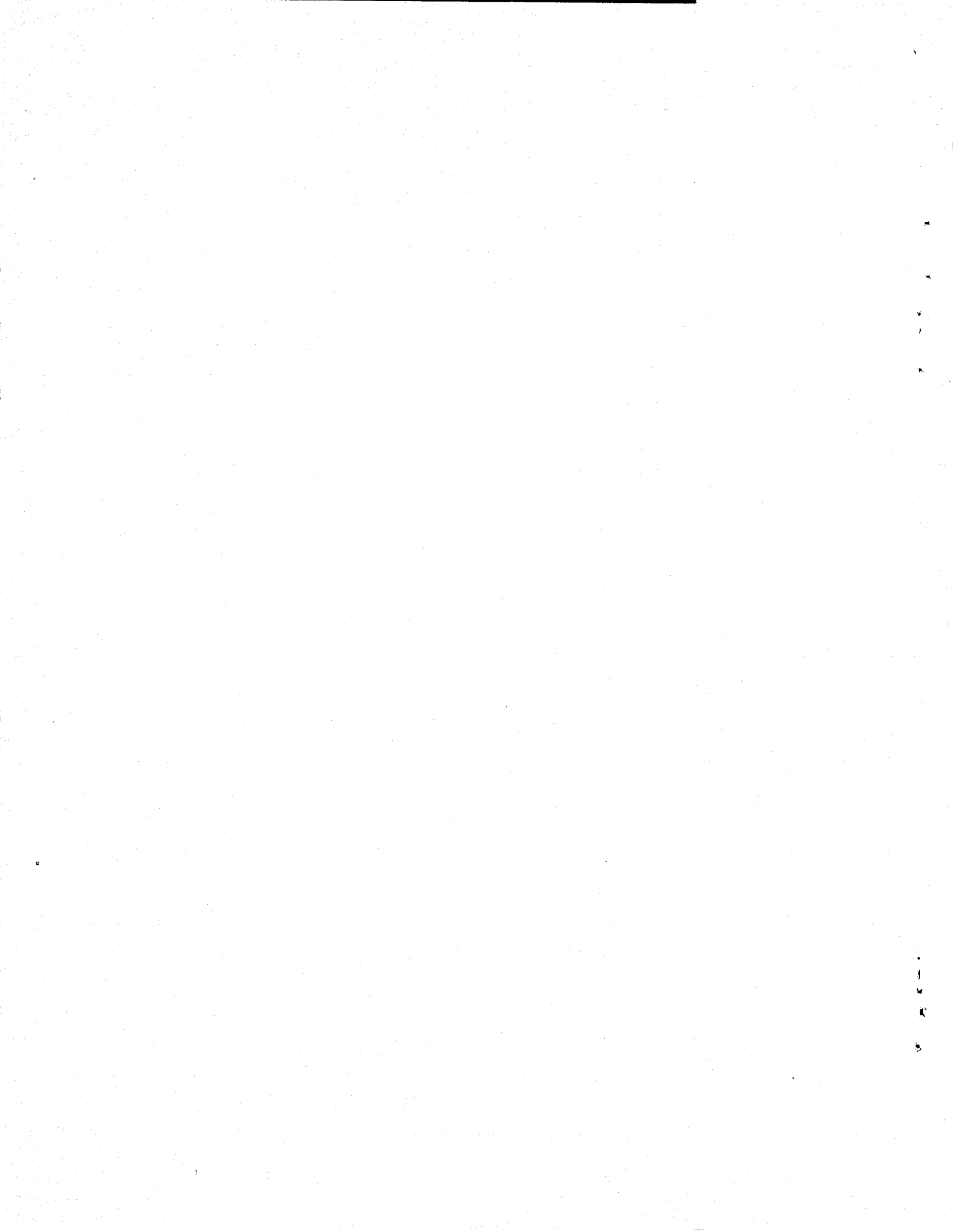


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FOREWORD

The New Hampshire Alcohol Safety Action Project (ASAP) was a statewide traffic safety effort designed to reduce the toll of alcohol related motor vehicle accidents. The ASAP was operational for five years, 1972 - 1976.

Funding for the ASAP came from the Office of Driver and Pedestrian Programs of the National Highway Traffic Safety Administration and from the State of New Hampshire. The prime contractor for the state was the Program on Alcohol and Drug Abuse of the Division of Public Health Services. Other participating agencies and organizations included the New Hampshire State Police, various local police departments, the Division of Motor Vehicles, the Bureau of Consumer Protection Services, the Department of Centralized Data Processing, the New Hampshire Highway Safety Agency, Dawson Advertising, Inc. and Dunlap and Associates, Inc. Mr. John M. Muir was the ASAP Project Director.

The present report is one of a series of analytic studies which are part of the final report of the ASAP. In addition to the basic final report volume, these other reports deal with overall project impact, DWI enforcement activities, rehabilitation, and public information and education.

We wish to express our appreciation to the numerous individuals in the state who assisted us in our work. We gratefully acknowledge the cooperation of Mr. Muir and his staff, Mr. John Bonds, Mr. William Jacques and Mr. Edward Rosen. Special thanks are also due to Mrs. Lorraine Good for her diligent work in typing the manuscript.

I. INTRODUCTION

The overall objective of the New Hampshire Alcohol Safety Action Project (ASAP) was to reduce the number of alcohol related fatal and injury producing motor vehicle accidents which occurred in the state. Efforts toward this objective were carried out by a variety of countermeasures in such areas as enforcement, driver retraining/rehabilitation, and public information and education. The ASAP efforts were structured as a system which tried to come to grips with different facets of excessive drinking coupled with driving.

The model which has emerged from NHTSA's alcohol countermeasures efforts is a health-legal approach which seeks to deter alcohol impaired driving and, failing deterrence, to follow a comprehensive case handling approach from enforcement, through adjudication to education and treatment.

At the peak there were 35 ASAPs in operation in cities, counties and states throughout the country. Each of these projects undoubtedly encountered differing existing conditions as they attempted to pursue the systems approach which is basic to the ASAP concept.

An important part of the overall processing of DWI offenses* is, of course, the adjudication of these offenses. In contrast to many other communities which undertook ASAP projects, the situation in New Hampshire in the ASAP planning period (mid-1971) was one in which DWI cases were being adjudicated rapidly, plea bargaining was virtually non-existent, and about 90 percent of the cases reaching the court system resulted in a guilty outcome. In addition, there appeared to be a high degree of willingness among the courts to employ the ASAP's driver retraining/rehabilitation countermeasure by referring persons found guilty of DWI.

Given these circumstances the New Hampshire ASAP did not undertake any specific activities to try to enhance the courts' processing of DWI cases. To the contrary, in planning its countermeasures the project intentionally set about to minimize the effects it would have on the court system, especially so with regard to establishing the rehabilitation countermeasure.

During the course of the ASAP, there have been a number of changes in the judicial environment. Certain laws relating to DWI cases have been modified, annual case loads have more than tripled in number, breath testing has replaced blood testing for evidentiary purposes, legal challenges and court rulings have established new case law and rehabilitation was added as an option in DWI adjudication.

The purpose of the present report is to describe the DWI adjudication process in the state and to examine what, if any, changes have taken place since the introduction of the alcohol countermeasures effort. Section II of the report describes the adjudication system and process. This is followed in Section III by an analysis of DWI case disposition.

*In New Hampshire the specific offense is operating a motor vehicle under the influence of intoxicating liquor. Common local usage, followed herein, is to refer to the offense as DWI (Driving While Intoxicated).

II. THE ADJUDICATION SYSTEM

A. Applicable Laws and Sanctions

In late 1973 the State adopted a new uniform criminal code which included modifications to the drinking - driving statutes. The principal change was to define the act of operating a motor vehicle while under the influence of intoxicating liquor as a misdemeanor offense punishable by possible fines up to \$1,000 and jail terms up to one-year. (In the old law, first offense convictions were punishable by fines of \$100 - \$500 and possible jail sentence of two days to six months. Second offense convictions were punishable by fines of \$500 - \$1,000 and jail sentences of 10 days to six months.)

Under both sets of laws, persons convicted as first offenders have their licenses revoked for 60 days to two years, while second offense convictions result in a three-year license revocation.

Other relevant statutes are as follows:

- Implied Consent--persons arrested for DWI who refuse to submit to a chemical test for alcohol have their licenses revoked for 90 days. Such revocations generally run concurrently with court ordered revocations stemming from disposition of the DWI case itself.

In 1975 the Legislature modified the implied consent statute to authorize return of a license should a person revoked under this provision be found not guilty of the DWI charge.

- Evidence--New Hampshire conforms to the national standard for presumptive evidence for alcohol related traffic offenses. That is, a Blood Alcohol Concentration (BAC) of .10 percent is considered prima facie evidence that a person was under the influence of intoxicating liquor. While BAC results in the .05 to .10 range under the law are considered possible relevant evidence, the courts generally will not convict persons who have BAC's under .10 percent. Common police practice is to release (not arraign) individuals who test below the presumptive level.
- Appeals--persons convicted of DWI who appeal the finding have their licenses suspended following the initial conviction for the period ordered by the court. This provision, established during 1973, repeals an earlier provision which enabled persons appealing to post a peace bond to retain their license until the appeal was heard. The repeal was based on the finding that the majority of appeals were withdrawn prior to being heard. That is, persons were using the peace bond provision to control when their license would be revoked.
- Habitual Offenders--New Hampshire law provides that persons who have unusually poor driving records (generally three convictions in a five year period for serious offenses including DWI, or 12 convictions for speeding or center-line violations) may be declared habitual offenders and have their licenses revoked for a four year period. If convicted for operating a motor vehicle during this time,

the law specifies a mandatory 1 - 5 year jail term which cannot be suspended.

B. Description of the Courts

Cases involving the charge of operating a motor vehicle under the influence of intoxicating liquor (hereafter, DWI) are heard initially in the District/Municipal Courts. At the end of 1976 there were a total of 59 courts in this system (41 District and 18 Municipal). The Municipal Courts are gradually being phased out of the system as the judges who head them retire. When this occurs the community served is transferred into the nearest District Court or a new court is formed. The number of active courts in the system, therefore, has been gradually declining.

The geographic area and population served by any given court varies considerably across the state. For example, Nashua District Court serves an area of approximately 160 square miles with a population of some 73,000 persons, while the Conway court area has approximately 7,500 residents in 440 square miles. Similarly, the case load of individual courts varies considerably, generally in relation to the population of the area served. The most active court is located in the City of Manchester with a total annual case load in excess of 20,000. At the other extreme, there are several courts which handle only 500 - 600 cases per year. The average case load across all courts in the system is approximately 2,500 per year.

The District/Municipal Courts are limited to hearing non-felony cases (violations and misdemeanors). The majority of the cases heard by the courts are traffic related, with DWI cases accounting for about five percent of total court activity. All cases before these courts, including DWI, are tried by a judge (i.e., jury trials are not available). All District Court judges are appointed by the Governor for a permanent term which extends until the judge reaches 70 years of age. All but five of the judges in the state serve on a part-time basis.

Appeals of the findings of District/Municipal courts are to the Superior Courts, of which there is one per county, or 10 throughout the state. At the Superior Court level the appellant may select a trial by jury or before a judge. Appeals as to matters of law are to the New Hampshire Supreme Court.

C. Processing of DWI Cases

Given their case load requirements, most District/Municipal courts hold sessions on a weekly basis, while some sit at more frequent intervals. With this frequency it is typical to find DWI cases being arraigned within a week of the arrest. At arraignment an individual may plead guilty, not guilty or nolo contendere. In the case of a guilty or nolo plea, a sentence is typically imposed immediately by the judge. If a not guilty plea is entered, a future trial date is set, usually within a few weeks of the initial court appearance.

In contested DWI cases in many courts, the arresting officer serves as the prosecutor of the case. Thus, except for some communities which have separate prosecutors, prosecution policy is in the hands of the arresting department (specifically the arresting officer). This procedure minimizes the amount of plea bargaining that takes place.

Following arrest, in-state residents are typically released on their own recognizance pending court appearance. Out-of-state residents, on the other hand, are required to post bond prior to their release. Persons who fail to appear (default) on the scheduled court date have their license suspended (or right to operate in New Hampshire if they are out-of-state residents), bench warrants are issued and any bond is forfeited. Under New Hampshire Law, persons conducting breath or blood tests are required to appear in court only if the defendant files notice requiring such appearance within ten days of the date of receipt of the blood alcohol test results. If such a notice is not filed, the law states that, "the official report of said test...shall be deemed conclusive evidence of the conduct and results of said test."

The results of all DWI cases are recorded on court returns which are forwarded to the Division of Motor Vehicles where driver records are maintained. Regarding the disposition of fines, the first ten dollars and twenty percent of the remainder are retained by the courts to cover operating costs, while the rest of the fine is forwarded to the state where it becomes part of the Highway Fund.

D. ASAP Relationship with the Courts

In the planning period for the ASAP it was determined that the District/Municipal Court system's handling of DWI cases was quite efficient with most cases being adjudicated quickly and with a high rate of guilty outcomes. Accordingly, the ASAP did not seek to undertake any activities designed to modify or enhance the court's processing of DWI cases.

On the other hand, considerable attention was devoted to the nature of the relationship the ASAP Rehabilitation Countermeasure would have with the courts. The system ultimately adopted involved soliciting referrals of convicted DWI offenders from the courts, a post-sentence diagnosis, and entry into Driver Retraining Schools located at various sites around the state. In order to motivate the offender to attend school, a possible sentence involving a variable length license revocation period was devised and was adopted by most of the courts referring persons to ASAP.

In New Hampshire, this system proved to be both workable and desirable. Among the advantages were:

- The absence of a mechanism imposed on the judicial process that would delay case disposition. In New Hampshire the majority of DWI cases are disposed within a month of the arrest (the average in 1976 was approximately 33 calendar days). Thus, in the ASAP planning period, the imposition of a pre-sentence investigation process between arraignment and disposition was rejected on the grounds that it would unduly disrupt court operations.
- Minimization of personnel required. Because of the relatively large number of courts in the system, and the absence of major population centers, a centralized referral and diagnosis process at the state level (with regional locations) minimized the number of personnel required to carry out these activities. All referrals from the courts were communicated to a central office

(Concord) where school assignments, correspondence, record keeping and coordination with such agencies as the Division of Motor Vehicles and alcohol treatment resources were carried out.

- Minimization of court involvement. Because of the part-time nature of most of the courts, the system adopted minimized the workload required of the courts. That is, except for completing one form indicating that the referral had been made, no new record keeping or other involvement was required of the courts. While the courts were provided with information they may have requested, this was at their initiative rather than required of them.

III. DWI CASE DISPOSITION

During the year 1976 there were 8,578 arrests made for DWI throughout New Hampshire. As of April 1977, court returns indicating case disposition had been received for 6,793 (79 percent) of these arrests.

The material in this section is based on a data collection and processing system established by the ASAP with the cooperation of the Division of Motor Vehicles (DMV). Each court return related to a DWI case was routed to an ASAP clerk who was located in the DMV where relevant data were encoded. This information was subsequently matched with individual arrest records maintained by the ASAP and then computer processed.

For the DWI arrests made in 1976 the adjudication status is as follows:

Charged as first offender	6,300
Charged as second offender	489
Not adjudicated	1,789

These figures show that most of the charges brought are first offenses (93 percent of the cases reaching the courts). Of the 1,789 cases for which disposition records were not obtained, the majority (1,090) involve arrests where the BAC was below the prime facie level of .10 percent. Thus, most of the not disposed arrests involve cases where the individuals were released rather than arraigned.

There remain, however, 699 cases where the persons arrested either refused a chemical test or the BACs were .10 percent or higher, but no records of court dispositions have been obtained. This level of undisposed cases is consistent with what has been noted in previous years in the state.

Examination of the characteristics of these cases over the years has shown no particular patterns that would indicate specific problems within the system (e.g., no concentration of these cases in particular locales). There are four likely reasons for the situation:

1) An inherent error rate in the ASAP data system brought about by the requirement to reconcile names and dates of birth from hand written source documents.

2) Cases which have not yet gone to court or not yet been reported by the courts to the Division of Motor Vehicles.

3) Decisions not to prosecute (for example in locales where judges will not convict unless the BAC is at least several one-hundredths higher than the prime facie level).

4) Cases plea bargained to a lesser offense. (Each year 100 to 150 of the not disposed DWI cases have been found to have been adjudicated on a charge that would indicate plea bargaining or conviction for another charge made at the time of the DWI arrest.

Figure 1 shows the flow of adjudication of persons arrested for DWI in 1976.

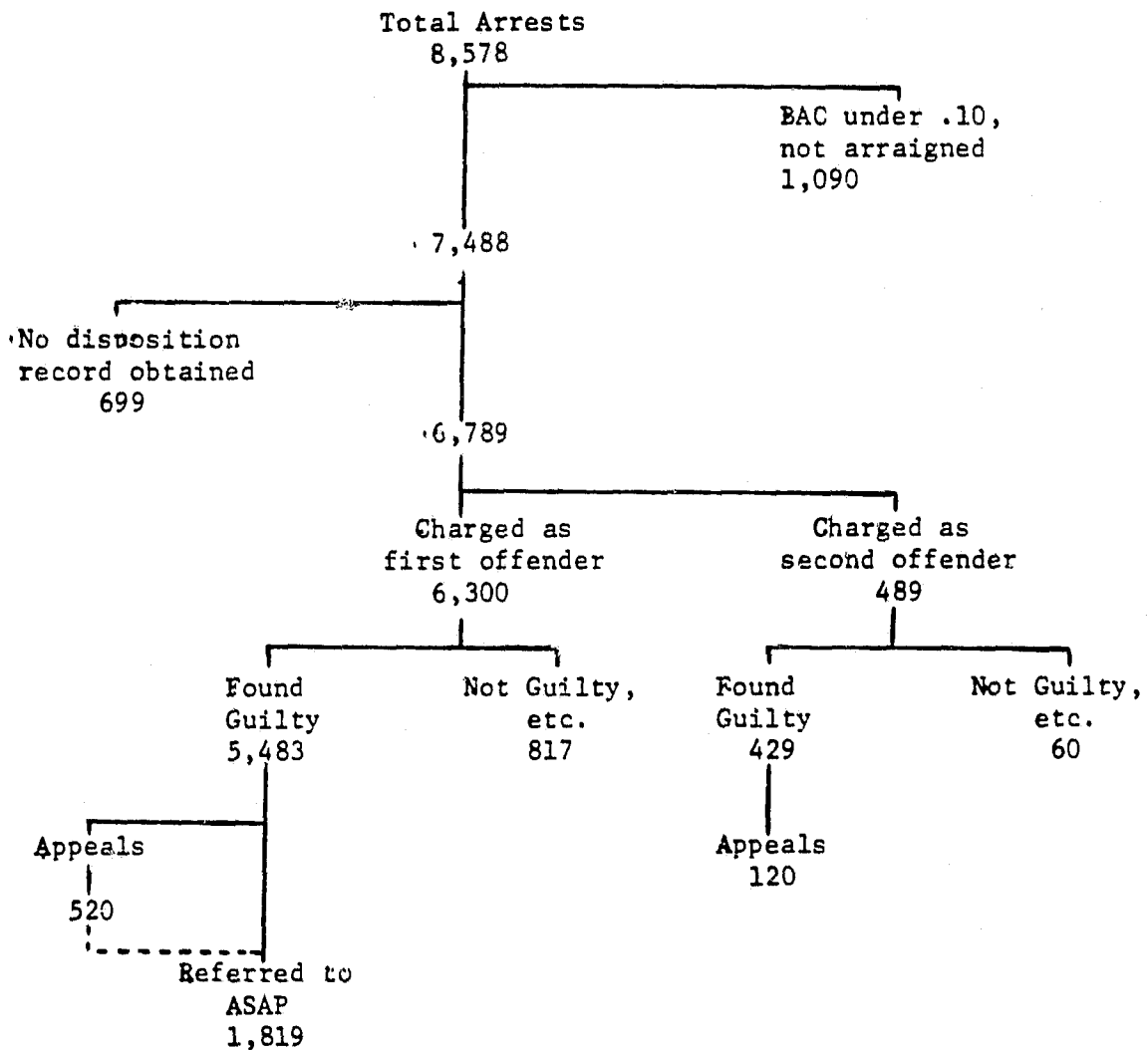


Figure 1. Flow of Adjudication Outcomes of Persons Arrested for DWI in 1976

A. Pleas and Findings

Tables 1 and 2 indicate the dispositions of first and second offense arrests which occurred during 1976. As a comparison, data are also shown for arrests made in 1971 through 1975.

The figures in the table show considerable stability over the years. Comparing Tables 1 and 2 indicates that persons charged as second offenders are more likely to contest the case than are first offenders. For example, 44 percent of 1976 second offense cases pleaded not guilty compared to 31 percent of first offense cases. Also, appeal rates of guilty findings are approximately three times higher than in first offense cases. These tendencies are undoubtedly due to the greater penalties involved in second offense cases.

Table 3 summarizes pleas and findings over the five ASAP years 1972 - 1976.

1. Arresting Agency

Table 4 shows the pleas, findings and appeals in the adjudication of 1976 DWI arrests as a function of the enforcement agency which made the arrests. The figures in the table show no major differences when special patrols, local and state police are compared. The same outcome has been noted when similar data for earlier years have been examined.

2. Arrest Type

Table 5 shows the pleas, findings and appeal rates for 1976 cases tabulated according to whether the arrest occurred in an injury or property damage accident situation or occurred in a traffic stop (non-accident) situation. The table indicates a greater tendency for persons arrested following an accident to plead nolo contendere than their counterparts who were arrested following a traffic stop. This finding may be related to matters of civil liability associated with the accidents, i.e., a desire to avoid an overt admission of culpability.

B. Penalties

Table 6 shows the distribution of monetary fines and license revocations imposed in first offense cases in each year from 1971 to 1976*. The figures in the table show that there has been an increase over the years in the average fine in these cases, with most fines being in the \$100 - \$200 range. The most typical license revocation period has been 60 days while the variable length revocation associated with referral to driver retraining/rehabilitation was second most frequent, and increasing.

1. Arresting Agency

Table 7 shows the distribution of monetary fines and license revocations imposed in first offense cases stemming from 1976 arrests, as a function of arresting agency. The figures show somewhat higher average fines and

*All second offenders undergo three year license revocations. Fifty-two percent of these persons paid fines of \$500 or more, 32 percent paid between \$200 and \$500 while the remainder paid less than \$200.

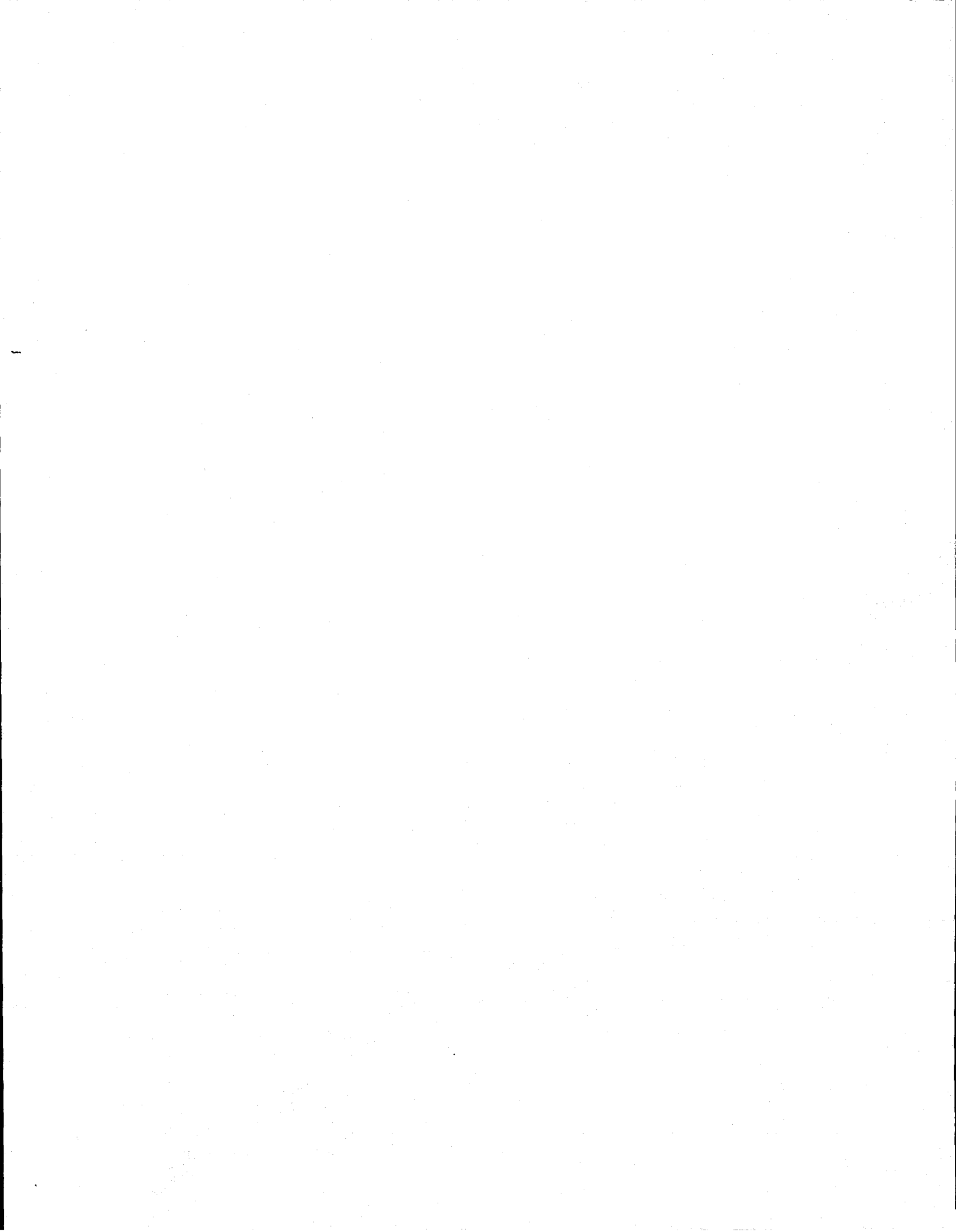


TABLE 1

PLEAS, FINDINGS AND APPEALS IN DWI FIRST OFFENSE CHARGES*

	1976 Arrests (N = 6300)	1975 Arrests (N = 6472)	1974 Arrests (N = 6398)	1973 Arrests (N = 5617)	1972 Arrests (N = 3930)	1971 Arrests (N = 2236)
<u>Pleas</u>						
Guilty	49.6%	48.9%	49.2%	50.0%	46.6%	46.8%
Not Guilty	30.8	32.4	30.9	31.4	32.2	27.5
Nolo Contendere	17.2	16.7	18.0	16.9	19.2	24.2
None (Default)	2.3	2.0	1.9	1.7	1.9	1.5
<u>Findings</u>						
Guilty	89.5%	88.5%	87.7%	89.7%	91.8%	89.0%
Not Guilty	4.2	5.2	6.3	4.9	3.3	2.7
No! Pros	5.0	5.3	4.6	3.7	3.7	5.9
Dismissed	1.3	1.0	1.4	1.7	1.3	2.3
<u>Appeal Rate</u>	9.5%	10.6%	7.9%	11.8%	18.2%	12.7%

*In this and following tables unknown pleas, findings, etc. are eliminated from percentage calculations. Such instances are included in total N's shown.

TABLE 2

PLEAS, FINDINGS AND APPEALS IN DWI SECOND OFFENSE CHARGES

	1976 Arrests (N = 489)	1975 Arrests (N = 472)	1974 Arrests (N = 449)	1973 Arrests (N = 483)	1972 Arrests (N = 331)	1971 Arrests (N = 194)
<u>Pleas</u>						
Guilty	40.7%	36.9%	43.8%	43.4%	36.9%	46.0%
Not Guilty	44.3	52.6	37.2	44.4	47.8	38.5
Nolo Contendere	11.0	8.4	15.3	9.7	13.8	15.5
None (Default)	4.0	2.2	3.6	2.5	1.6	0
<u>Findings</u>						
Guilty	91.9%	89.3%	91.0%	95.1%	96.9%	96.4%
Not Guilty	4.1	5.0	5.6	2.7	1.2	1.0
Nol Pros	3.4	4.1	2.8	1.1	1.5	2.1
Dismissed	0.6	1.5	0.7	1.1	0.3	0.5
<u>Appeal Rate</u>	28.0%	30.9%	20.9%	28.9%	32.7%	22.6%

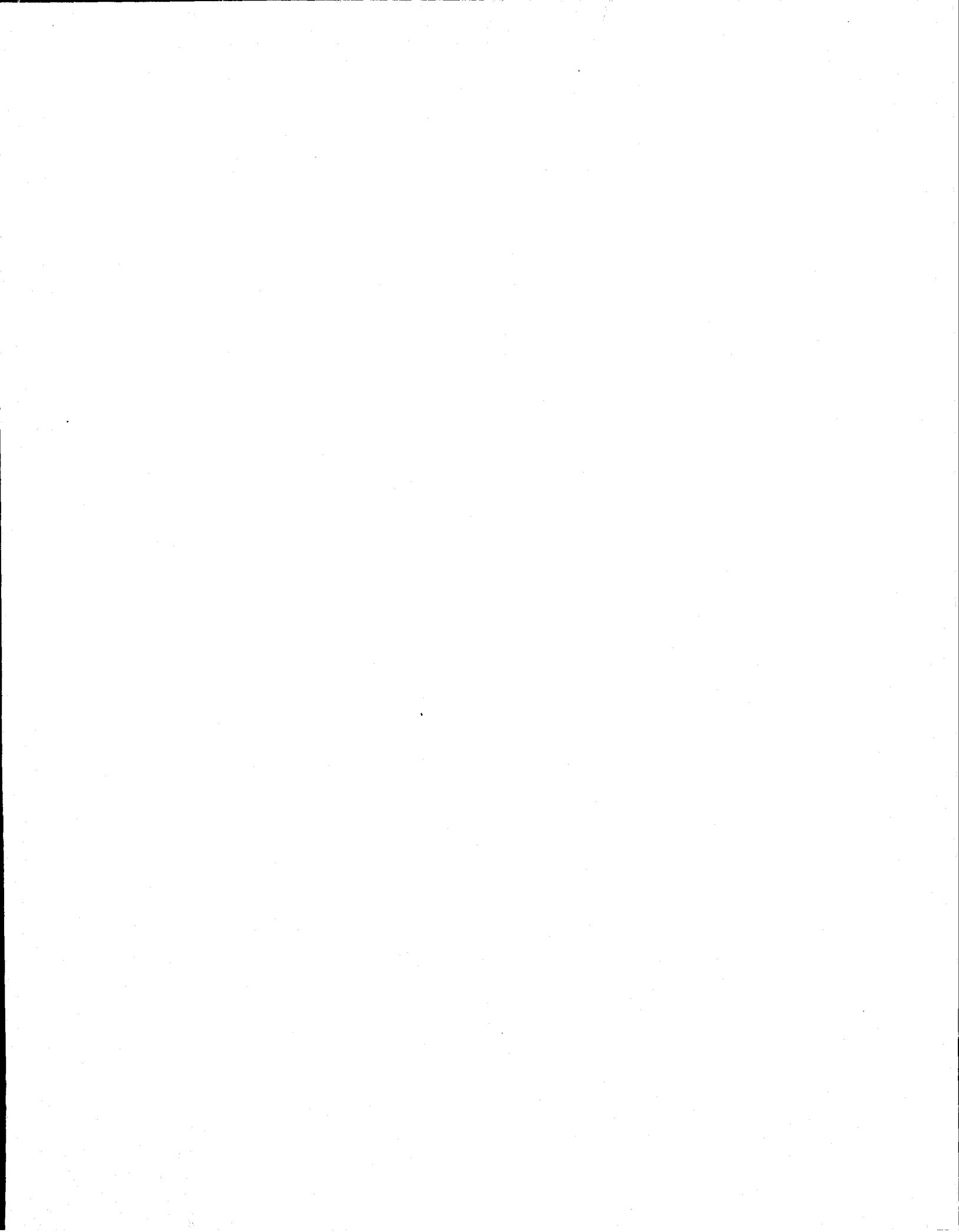


TABLE 3

PLEAS, FINDINGS AND APPEALS IN DISPOSED
DWI CASES, 1972 - 1976

	First Offenses (N = 28717)	Second Offenses (N = 2224)
<u>Pleas</u>		
Guilty	49.0%	40.5%
Not Guilty	31.5	45.2
Nolo Contendere	17.5	11.5
None (Default)	2.0	2.9
<u>Findings</u>		
Guilty	89.2%	92.6%
Not Guilty	4.9	3.9
Nol Pros	4.5	2.6
Dismissed	1.3	0.9
<u>Appeal Rate</u>	11.0%	28.1%

TABLE 4
 PLEAS, FINDINGS AND APPEALS
 1976 ARRESTS BY ARRESTING AGENCY

	<u>First Offense</u>			<u>Second Offense</u>		
	ASAP Patrols (N = 239)	State Police (N = 1094)	Local Police (N = 4967)	ASAP Patrols (N = 13)	State Police (N = 58)	Local Police (N = 418)
<u>Pleas</u>						
Guilty	50.2%	53.6%	48.7%	61.5%	50.0%	38.8%
Not Guilty	32.2	29.1	31.2	30.8	33.9	46.1
Nolo Contendere	16.3	14.7	17.8	7.7	8.9	11.4
None (Default)	1.3	2.6	2.3	0	7.1	3.6
<u>Findings</u>						
Guilty	90.7%	92.4%	88.8%	100%	94.3%	91.3%
Not Guilty	1.7	4.9	4.2	0	0	4.7
Nol Pros	6.4	1.8	5.7	0	3.8	3.5
Dismissed	1.3	0.9	1.3	0	1.9	0.5
<u>Appeal Rate</u>	7.5%	10.6%	9.3%	15.4%	20.0%	29.5%

TABLE 5

PLEAS, FINDINGS AND APPEALS
1976 ARRESTS BY ARREST SITUATION

	<u>First Offense</u>			<u>Second Offense</u>		
	Injury Accident (N = 212)	Property Damage (N = 262)	Non Accident (N = 5826)	Injury Accident (N = 14)	Property Damage (N = 19)	Non Accident (N = 456)
<u>Pleas</u>						
Guilty	33.5%	39.8%	50.6%	21.4%	21.1%	42.2%
Not Guilty	33.0	28.1	30.9	35.7	52.6	44.2
Nolo Contendere	32.5	31.3	16.0	42.9	15.8	9.8
None (Default)	1.0	0.8	2.5	0	10.5	3.8
<u>Findings</u>						
Guilty	86.7%	87.7%	89.7%	78.6%	100%	92.0%
Not Guilty	5.7	4.2	4.2	14.3	0	3.9
Nol Pros	6.7	6.5	4.9	7.1	0	3.4
Dismissed	1.0	1.5	1.3	0	0	0.7
<u>Appeal Rate</u>						
	7.7%	8.3%	9.6%	18.2%	35.3%	27.9%

TABLE 6

FINES AND LICENSE REVOCATIONS IN FIRST OFFENSE CASES

	1976 (N = 5483)	1975 (N = 5728)	1974 (N = 5611)	1973 (N = 5038)	1972 (N = 3608)	1971 (N = 1990)
Fines*						
None Indicated	0.9%	1.3%	2.0%	4.7%	7.6%	2.3%
All Suspended	1.5	1.7	1.1	1.2	1.0	2.1
Under \$100	3.4	3.5	2.5	2.6	3.1	6.2
\$100	14.1	15.2	16.5	26.1	30.8	38.1
\$101 - 200	74.7	74.2	74.4	62.5	55.1	49.6
\$201 - 499	4.5	3.1	2.9	2.2	1.6	1.5
\$500 - Up	0.9	1.0	0.6	0.7	0.7	0.3
Average	\$160	\$156	\$153	\$151	\$147	\$133
Revocation Period						
None Indicated	0.3	0.9%	1.5%	5.9%	12.8%	10.4%
Variable (ASAP Referral)**	32.5	28.3	28.6	24.7	12.0	-
60 Days	46.8	47.6	46.8	46.3	51.4	62.7
90 - 120 Days	13.0	15.7	17.2	16.7	17.5	19.0
121 - 364 Days	4.1	4.2	3.6	3.8	3.8	4.3
1 Year - Up	3.2	3.3	2.3	2.0	2.7	3.4

* Fines shown are those actually assessed. That is, portions of fines suspended are not included in these figures.

** In referring to ASAP, judges typically issue a variable length revocation (usually 60 - 120 days). Persons cooperating with the diagnosis-driver retraining process may reapply for a license in the minimum period. Those not cooperating remain revoked for at least the longer period.



TABLE 7

FINES AND LICENSE REVOCATIONS IN FIRST OFFENSE CASES
1976 ARRESTS BY ARRESTING AGENCY

	ASAP Patrols (N = 214)	State Police (N = 978)	Local Police (N = 4291)
Fines			
None Indicated	0.9%	1.1%	0.8%
All Suspended	0.9	1.8	1.5
Under \$100	1.4	3.9	3.4
\$100	13.1	13.6	14.3
\$101 - 200	80.8	75.8	74.2
\$201 - 499	2.4	3.4	4.8
\$500 - Up	0	0.4	1.1
Average	\$156	\$157	\$161
Revocation Period			
None Indicated	0.9	0.4	0.3
Variable	29.0	28.7	33.5
(ASAP Referral)			
60 Days	57.0	51.7	45.1
90 - 120 Days	8.9	11.8	13.5
121 - 364 Days	3.3	4.0	4.2
1 Year - Up	0.9	3.4	3.3

greater referrals to retraining among local police arrests than among state police or special patrol arrests. The differences are not large, however.

2. Arrest Type

Table 8 presents data similar to that in Table 7 but arrayed by arrest situation. The figures show there was a somewhat greater tendency to refer to ASAP in accident related arrests than in non-accident arrests. Beyond this, there are no major sanctioning differences related to arrest situation.

C. Individual Court Activity

In order to indicate the range of individual court activity in dealing with DWI cases, the dispositions of persons arrested in 1973, 1974, 1975 and 1976 and charged as first offenders are shown on a court by court basis in Tables 9 and 10. (District Court data are in Table 9 while Municipal Court data are in Table 10).

The tables show that there is a wide variation in DWI caseload among the individual courts with several of the Municipal Courts handling fewer than 25 cases, while at the other extreme, several of the larger District Courts handling several hundred DWI cases each year. The tables show a range of conviction rates of 1976 arrests from 66 to 100 percent with 39 of 59 courts (66 percent) having conviction rates of 85 percent or higher. (Note that guilty rates exclude default cases, while the total number of cases shown include the defaults.)

It was seen earlier in Table 6 that the average fine of disposed (guilty) 1976 arrests was approximately \$160. It may be seen in Tables 9 and 10 that the average fine imposed by individual courts varies from this overall average, with the range of average fines being from \$78 to \$215. While not shown, data on the distribution of fines by individual courts indicate the courts are generally internally consistent in the amount of fines imposed. What does vary are the fine amounts imposed when the courts are compared with one another.

D. Appeals

It was noted earlier that appeals from the District/Municipal courts are to Superior Courts, of which there is one for each of the 10 counties in the State. The topic of appeals in DWI cases is difficult to assess because of changes in the legal environment and the long time period between the average appeal and its disposition. Regarding the former, in 1973 a law was passed which placed persons convicted of DWI who appealed, under license suspension for the term imposed by the District Court or until the appeal was heard. Prior to this change, persons could post a bond and retain their license until the appeal was heard. Under the old system, the majority of appeals were withdrawn before being heard in the Superior Court. That is, the appeal process was being used in many cases to control when license revocation would go into effect. Tables 1 and 2 show there was a drop in the appeal rate in 1974, but that in 1975 and 1976 cases, the rate had returned to that of earlier years.

The second difficulty in assessing appeals is the relatively long period between the appeal and the Superior Court hearing. For example, an examination

TABLE 8
FINES AND LICENSE REVOCATIONS IN FIRST OFFENSE CASES
1976 ARRESTS BY ARREST SITUATION

	Injury Accident (N = 182)	Property Damage (N = 228)	Non Accident (N = 5073)
Fines			
None Indicated	0.5	0.9	0.9
All Suspended	2.7	0	1.5
Under \$100	4.4	4.4	3.3
\$100	15.4	18.4	13.9
\$101 - 200	70.9	69.3	75.1
\$201 - 499	4.4	4.8	4.5
\$500 - Up	1.6	2.2	0.8
Average	\$160	\$162	\$160
Revocation Period			
None Indicated	0.5	0	0.4
Variable	40.7	37.7	32.0
(ASAP Referral)			
60 Days	40.7	47.4	47.0
90 - 120 Days	9.3	9.6	13.3
121 - 364 Days	6.6	1.8	4.1
1 Year - Up	2.2	3.5	3.2

TABLE 9

DISTRICT COURT DISPOSITION OF FIRST OFFENSE CASES
AMONG PERSONS ARRESTED FOR DWI IN 1973, 1974, 1975 and 1976

Court	Number of Cases				Percent Guilty				Appeal Rate (Pct.)				Average Fine				Average Days to Disposition			
	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973
Auburn	83	73	68	75	89	86	80	90	10	13	10	8	\$122	\$143	\$129	\$122	48	63	44	29
Berlin	89	100	109	92	100	96	98	94	7	8	3	8	114	121	113	103	20	21	12	19
Claremont	146	184	187	153	92	85	84	87	1	2	1	6	156	157	156	118	29	29	17	8
Colebrook	23	51	32	38	76	86	71	100	0	14	24	13	126	167	208	198	53	28	32	24
Concord	329	384	484	337	84	82	80	87	10	10	3	6	178	124	127	117	35	50	43	27
Conway	169	110	55	133	86	86	88	95	3	12	12	6	146	143	167	167	45	40	35	25
Derry	228	194	102	78	92	86	90	85	10	9	1	5	143	146	149	143	41	39	39	27
Dover	164	208	133	137	95	92	98	93	26	21	14	17	208	206	209	212	28	23	20	15
Durham	78	72	100	84	100	99	89	87	29	20	25	24	194	193	212	225	25	27	26	23
Exeter	139	133	105	125	77	89	87	87	18	15	19	25	166	167	173	178	37	31	30	24
Franklin	122	134	151	107	66	69	67	76	10	9	5	10	133	124	118	110	26	35	27	19
Cofftown	59	54	72	62	92	89	90	95	2	10	2	7	187	177	189	227	26	44	34	19
Corham	41	29	30	38	83	83	92	86	6	8	4	6	129	123	122	107	11	17	12	11
Hampton	489	511	399	301	91	91	87	90	6	11	9	14	155	150	151	155	35	37	40	29
Hanover	43	36	45	56	95	94	84	87	0	3	0	14	149	152	147	113	32	26	26	27
Haverhill	50	48	79	72	90	94	95	98	2	2	10	3	156	170	165	156	17	18	20	12
Henniker	78	61	58	30	88	90	86	80	12	11	5	17	146	158	152	141	31	29	17	14
Hillsborough	48	49	56	52	78	71	85	84	3	6	10	12	188	191	191	175	31	40	31	33
Hooksett	98	90	86	40	76	82	75	75	4	7	10	3	165	144	129	119	44	40	33	24
Jaffrey	99	86	109	121	80	78	78	87	13	22	18	21	165	164	165	164	30	34	28	24
Keene	277	275	305	335	99	99	96	92	11	12	6	19	132	111	121	114	31	34	30	24
Laconia	369	347	380	264	92	94	93	92	7	13	7	13	134	147	161	161	23	29	18	13
Lancaster	53	56	79	44	79	74	87	93	5	3	0	5	148	153	145	144	31	17	18	12
Lebanon	76	87	109	129	92	91	91	95	4	5	3	7	142	142	142	139	28	35	33	19
Lincoln	39	44	45	36	87	91	98	97	0	0	0	3	113	139	136	121	29	20	20	17
Littleton	75	128	47	42	83	93	95	90	5	9	5	11	157	148	143	144	24	19	23	17
Manchester	320	374	307	281	99	99	99	99	8	5	6	9	158	152	137	145	42	54	28	20
Marriack	199	229	241	160	90	83	82	86	11	12	9	11	167	154	159	162	47	48	33	29

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TABLE 9 (Cont'd)

Court	Number of Cases				Percent Guilty				Appeal Rate (Pct.)				Average Fine				Average Days to Disposition			
	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973
Milford	132	99	125	98	85	77	75	76	11	21	7	11	\$190	\$203	\$170	\$172	46	48	30	26
Nashua	485	475	552	414	88	83	85	89	9	9	6	15	213	211	186	179	35	37	34	23
New London	47	42	27	33	93	86	85	84	2	6	0	4	126	129	148	126	31	28	20	18
Newport	75	92	161	101	71	84	80	86	7	7	5	11	150	139	116	111	35	25	28	21
Ossipee	55	43	56	38	93	95	90	84	14	7	5	9	128	121	143	148	42	40	32	26
Peterborough	77	92	98	71	78	74	86	76	15	23	25	28	166	145	151	150	38	46	32	22
Plaistow	129	124	80	73	83	85	75	76	3	2	2	2	135	111	135	121	36	33	30	26
Plymouth	67	63	90	93	83	84	69	86	5	4	4	8	138	132	138	134	23	28	32	26
Portsmouth	205	180	167	255	80	81	79	88	9	8	13	22	185	198	193	191	35	34	30	28
Rochester	156	219	224	227	91	87	91	92	17	17	15	19	203	206	208	204	25	28	25	21
Salem	274	197	270	185	95	97	95	91	4	4	4	3	144	105	108	105	31	34	36	25
Somersworth	66	100	41	76	91	75	79	89	20	16	16	22	191	201	197	177	29	29	37	19
Wolfboro	78	54	51	60	96	95	98	97	17	12	2	18	216	190	182	185	26	26	20	19

TABLE 10

MUNICIPAL COURT DISPOSITION OF FIRST OFFENSE CASES
 AMONG PERSONS ARRESTED FOR DWI IN 1973, 1974, 1975 and 1976

Court	Number of Cases				Percent Guilty				Appeal Rate (Pct.)				Average Fine				Average Days to Disposition			
	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973	1976	1975	1974	1973
Alton	10	15	25	31	100	93	83	90	10	0	5	4	150	\$150	\$138	\$142	24	21	17	13
Bethel	8	7	4	2	87	100	100	100	14	0	50	50	120	129	125	150	18	18	32	44
Bristol	33	37	43	48	97	100	89	94	3	14	3	4	138	143	132	124	20	25	15	17
Canaan	31	16	24	9	81	93	83	100	0	0	0	0	125	163	132	125	28	24	20	9
Epping	81	86	28	47	89	89	88	87	9	8	18	23	140	128	138	138	29	33	25	24
Farmington	23	26	38	36	91	100	97	89	10	8	10	12	210	214	202	202	22	27	21	20
Greenville	8	11	18	6	100	100	89	83	12	0	0	0	150	155	153	130	43	44	24	35
Hinsdale	28	19	35	26	100	83	94	96	4	7	0	4	78	83	90	102	34	34	26	20
Loudon	25	12	15	19	91	91	100	89	5	0	0	12	128	125	144	123	33	16	28	20
Meredith	66	58	92	72	92	86	94	90	5	8	6	9	145	150	146	150	20	23	19	18
Newmarket	14	19	46	33	87	79	86	94	8	13	8	3	137	125	135	156	27	17	25	20
Northumberland	17	28	9	17	81	90	100	94	8	0	0	0	142	208	189	186	36	30	27	16
Palham	27	26	26	8	96	88	91	100	8	0	0	0	138	170	156	144	35	21	22	16
Pittsfield	15	11	19	25	100	100	89	100	13	0	0	16	157	130	122	146	19	18	30	22
Rollinsford	10	64	30	16	80	80	77	69	12	12	9	18	159	195	183	161	12	25	13	12
Rye	22	32	23	22	73	77	83	82	6	17	26	28	152	157	166	191	37	45	38	30
Whitefield	33	37	12	17	97	92	100	88	0	0	0	0	120	120	144	122	10	23	17	17
Wilton	19	7	-	-	70	67	-	-	21	0	-	-	215	225	-	-	53	39	-	-

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of a limited set of Superior Court returns in 1974 showed that more than one-half related to arrests made a year or more earlier. Also, of the 520 appeals taken in 1975 first offense cases, the outcomes are known in only a third of the total. The following is the distribution of the outcomes of these cases.

Guilty	31%
Guilty - Reduced sentence	16
Guilty - Reduced charge	16
Not Guilty	8
Nol. Pros.	28

The figures show that about 47 percent of the appeals resulted in a DWI conviction while 16 percent resulted in conviction on a lesser charge. Finally 36 percent of the cases were not prosecuted or resulted in a not guilty finding. Thus, from the limited data available, it appears that the chances of escaping a DWI conviction are considerably greater on appeal than in the District/Municipal Courts.

It was seen in Tables 9 and 10 that the appeal rates of the individual courts varied considerably. Grouping the data by the counties in which the courts are located shows the following:

First Offense Appeal Rates

<u>County</u>	<u>1976 Arrests</u>	<u>1975 Arrests</u>	<u>1974 Arrests</u>
Belknap	7.1%	11.7%	7.0%
Carroll	9.0	10.6	8.8
Cheshire	10.7	13.8	8.0
Coos	5.0	6.9	2.1
Grafton	3.3	5.8	4.3
Hillsborough	8.7	9.0	7.5
Merrimack	8.2	9.0	3.8
Rockingham	7.7	9.5	8.4
Strafford	22.1	18.3	15.9
Sullivan	2.2	3.5	4.2

These figures indicate that the appeal rate of 1976 arrests for courts in particular counties varied from a low of less than three percent to a high of 22 percent.

E. Individual Characteristics

1. BAC at Arrest

Table 11 shows the court disposition of 1976 DWI cases as a function of the blood alcohol concentration (BAC) recorded at the time of the arrest. The figures in the table indicate that persons who refuse a chemical test or who record a BAC between .10 and .14 percent are less likely to be convicted than are persons at higher BACs.

It may be recalled that during 1976, there were 1,090 persons who recorded BACs less than .10 percent when arrested and were not arraigned. Table 11 shows that there were 100 persons with BACs under .10 whose cases were presented to the court. Fifty-eight percent of these were nol-prossed, six percent were found not guilty and 36 percent were found guilty. Overall there were 1,190 persons arrested for DWI in 1976 who had BACs below .10 percent. The large

TABLE 11

DISPOSITION OF PERSONS ARRESTED IN 1976
AS A FUNCTION OF BLOOD ALCOHOL CONCENTRATION

BAC	N*	Percent Guilty	Percent Not Guilty	Percent Nol Pros	Percent Dismissed
No Test	1,692	84%	7%	7%	2%
Under .10	100	36	6	58	0
.10 - .14	1,445	86	8	6	1
.15 - .19	1,970	96	1	2	1
.20 - .24	1,048	95	1	2	1
.25 - Up	339	97	1	1	1

* Based on 6594 dispositions available for computer analysis. Table entries are percentages based on the N for each row.

TABLE 12
DISPOSITION OF PERSONS ARRESTED IN 1976
AS A FUNCTION OF AGE

Age Group	N*	Percent Guilty	Percent Not Guilty	Percent Nol Pros	Percent Dismissed
Under 20	1,019	88%	4%	7%	1%
20 - 29	2,626	90	4	5	1
30 - 39	1,269	90	4	5	1
40 - 49	869	90	5	3	1
50 - 59	546	93	3	2	2
60 - Up	228	86	5	7	1

* Based on 6,557 disposition available for computer analysis where age was known. Table entries are percentages based on the N for each row.

majority of these were not arraigned. The conviction rate for the total group was approximately three percent.

2. Age

Table 12 indicates the dispositions of persons arrested in 1976 as a function of their age group. The data show that drivers under 20 or age 60 and above have slightly lower conviction rates than other drivers. The differences among dispositions by age group are not large, however.

3. Residence

Table 13 indicates the dispositions of 1976 arrests for New Hampshire and out-of-state residents.

TABLE 13
DISPOSITION OF PERSONS ARRESTED IN 1976
AS A FUNCTION OF RESIDENCE

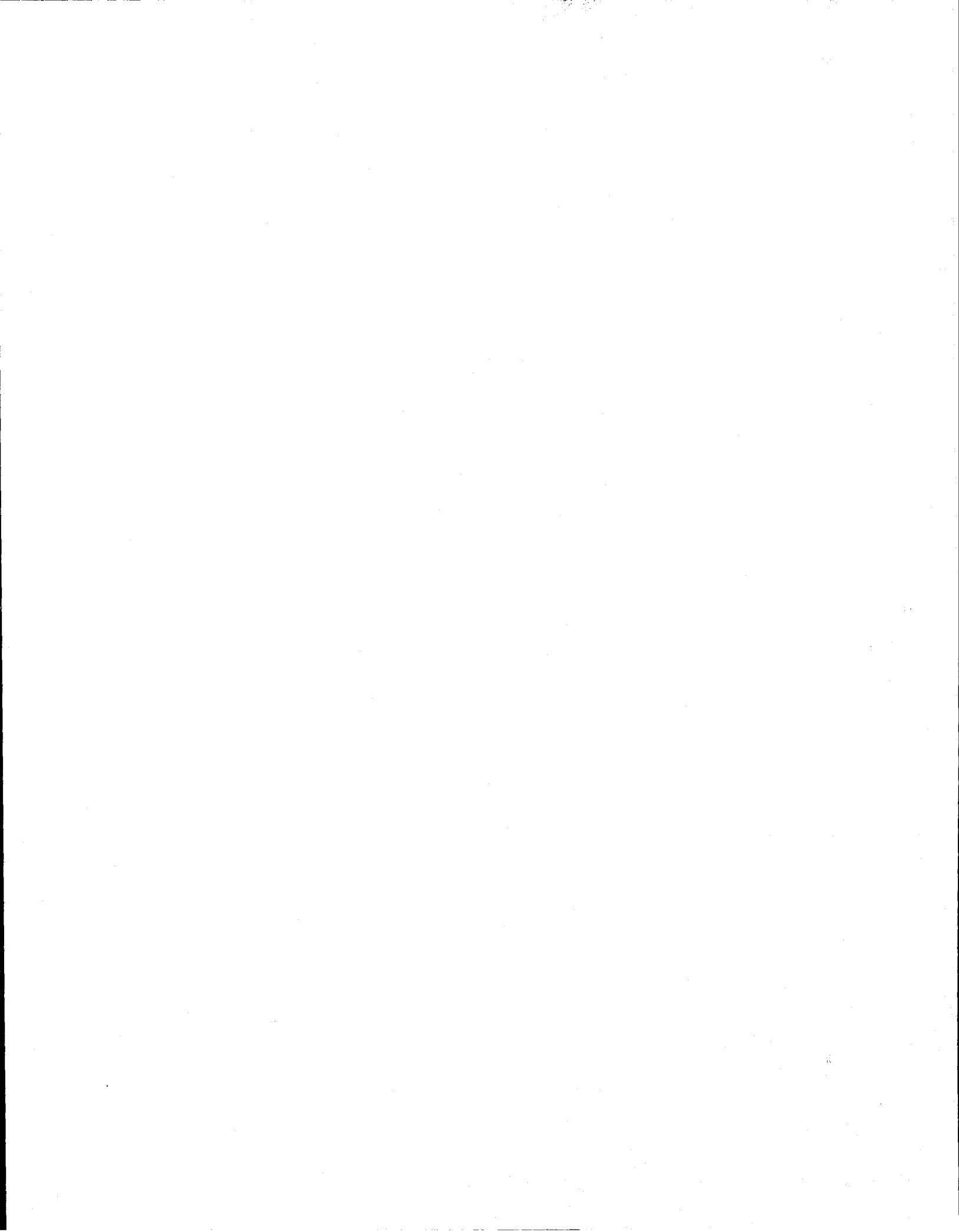
Residence	N*	Guilty	Percent Not Guilty	No! Pros	Dismissed
New Hampshire	4,655	88%	5%	6%	1%
Out-of-State	1,918	92	3	3	1

*Based on 6,573 dispositions available for computer analysis where residence was known. Entries are percentages based on the N for each row.

The figures in the table show a somewhat higher conviction rate for out-of-state residents. Testing the following contingency table indicates this difference is statistically significant.

<u>Residence</u>	<u>Guilty</u>	<u>Other</u>
New Hampshire	4,117	538
Out-of-State	1,770	148

$$\chi^2 = 21.44, \text{ d.f.} = 1, p < .01$$



END