AN EVALUATION OF FACTORS ASSOCIATED WITH VARIATION IN DUI CONVICTION RATES AMONG CALIFORNIA COUNTIES

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14. ABSTRACT

Although California's statewide driving-under-the-influence of alcohol and/or drugs (DUI) conviction rate has improved over time from 64% in 1989 to 79% in 2006, the DUI conviction rates vary considerably among counties. The purpose of this study was to identify factors associated with differences among California county DUI conviction rates averaged from 2000-2006. The three approaches to obtain information were: (a) surveys sent to California judges, prosecuting attorneys, public and private defense attorneys, and court administrators; (b) face-to-face interviews conducted with California judges, prosecuting attorneys, and public and private defense attorneys; and (c) analyses of various county-level demographic and socioeconomic factors, DUI arrest and conviction process measures, and crash/recidivism variables.

It was found that counties with higher DUI arrest rates tend to have lower DUI conviction rates. Counties with high DUI conviction rates tend to convict at lower BAC levels and have higher percentage usage of blood BAC tests. Counties also varied in their alcohol-reckless conviction rates as well as the BAC levels considered appropriate for negotiating alcohol-reckless plea bargains. While the 7-year (2000-2006) statewide average percentage of DUI arrestees convicted of alcohol-reckless driving was 8.1%, county percentages ranged from 0% to 22.6%. Higher prosecution caseload as measured by county violent crime rates is associated with lower DUI conviction rates, while shorter lengths of time from arrest to conviction are associated with higher DUI conviction rates. Varying prosecution policies were strongly identified by survey respondents as influencing variation in county DUI conviction rates. Convicting for drug-only DUI was considered to be very difficult due to the lack of scientifically based per se levels of drug impairment. Recommendations are made based on these findings.

15. SUBJECT TERMS
Drinking drivers, varying county DUI conviction rates, BAC levels, BAC tests, DUI surveys, DUI interviews, alcohol reckless convictions, drugs and driving

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PREFACE

This report is the final product of a project evaluating factors associated with variations in DUI conviction rates among California counties. This project was funded by the National Highway Traffic Safety Administration through a grant administered by the California Office of Traffic safety (Grant # AL0932). This report was prepared by the Research and Development Branch of the California Department of Motor Vehicles under the administrative direction of David J. DeYoung, Chief. The opinions, findings, and conclusions expressed in this report are those of the authors and not necessarily those of the State of California or the National Highway Traffic Safety Administration.

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EXECUTIVE SUMMARY

Background

The California Driving-Under-the-Influence Management Information System (CA DUI-MIS) was first created in 1991 in response to AB 757 (Friedman) enacted in 1989. This legislative mandate required the creation of a statistical reporting system for monitoring the performance of system components involved in controlling impaired driving in California. One of the main areas of concern in the CA DUI-MIS has been the driving-under-the-influence of alcohol and/or drugs (DUI) conviction rate, which is defined as the number of DUI convictions divided by the number of DUI arrests per given year of arrest. DUI conviction rates are of concern because if DUI arrestees are not convicted, they do not receive the appropriate penalties and sanctions. Also, DUI offenders who are not convicted of DUI or the reduced charge of alcohol-reckless would not be convicted as repeat DUI offenders if they subsequently re-offend, and thus would avoid the tougher repeat offender penalties.

Statewide, the DUI conviction rate has improved over time, from 64% among 1989 DUI arrestees to 79% for 2006 arrestees. In general, conviction rates have also improved for each of the 58 California counties over time, but the rates vary considerably among counties. For example, the average county DUI conviction rates from 2000 to 2006 ranged from a low of 41% in Trinity County to a high of 92% in Placer County. Counties also vary in the percentages of DUI arrests that are plea bargained to convictions of lesser offenses, the most important of these being alcohol-related "wet" reckless convictions. Averaged across 2000–2006, county alcohol-reckless conviction rates ranged from 0% in Ventura and Marin Counties to about 23% in Del Norte County. Differences in county alcohol-reckless conviction rates are among the factors that help explain the large differences in county DUI conviction rates, because alcohol-reckless convictions are not counted as DUI convictions in the calculation of DUI conviction rates. If other reasons for low DUI conviction rates in some counties can be discovered and remedied, variation in county DUI conviction rates can be reduced and the overall statewide DUI conviction rate can be increased.

Study Objectives

The goals of this study are to explore the DUI arrest and adjudication processes in California counties with both low and high DUI conviction rates, to analyze objective indicators of these processes, and to obtain additional detailed information from those involved in apprehending and adjudicating DUI offenders, in order to understand why conviction rates are low in some counties, and to recommend changes that may lead to increased DUI conviction rates and reduced variation in DUI conviction rates among counties.

Methods

In order to investigate differences in DUI conviction rates among California counties and the factors associated with these differences, the following three different approaches were used:

1. Survey questionnaires were sent by mail and email in May 2009 to 761 judges, prosecuting attorneys, defense attorneys (public and private), and court administrators, and data from the 171 respondents were analyzed.

2. Face-to-face interviews were conducted with 37 judges, prosecuting attorneys, and defense attorneys (public and private) from various urban and rural regions in California and transcriptions of the interviews were summarized to identify major themes.

3. Aggregated data of various county-related variables that include demographic and socioeconomic factors, DUI arrest and conviction process measures, and crash and recidivism variables were analyzed to describe differences between low and high DUI conviction rate counties on these factors, to identify variables that are the most strongly associated with variations in county DUI conviction rates across all California counties, and to describe the nature of these associations.

Results

Due to the extensive amount of data collected from the three components, this summary is limited to highlighting factors that were consistently identified as being potentially related to variation in county DUI conviction rates; these factors are discussed in the following subsections.

1. *County DUI Arrest Rates*

   Counties with higher DUI arrest rates tend to have lower DUI conviction rates, while counties with lower DUI arrest rates tend to have higher DUI conviction rates. While the mechanism underlying this association is not known, it is possible that high arrest rates contribute to court crowding, which results in lower conviction rates due to constraints on time and resources. On the other hand, it is possible that high conviction rates in counties contribute to general deterrence of impaired driving, resulting in lower DUI incidence and thus lower DUI arrest rates in those counties.

2. *Blood Alcohol Concentration Levels (BAC) and Testing*

   There are four issues that emerge with BAC levels and testing that are associated with variation among counties in DUI conviction rates: 1) the adequacy of the law enforcement testing processes, 2) the refusal of some offenders to complete BAC tests, 3) the relationship of obtained BAC levels to convictions for DUI or alcohol reckless, and 4) the types of chemical tests given.

   Regarding the first issue, some interviewed prosecutors reported that DUI convictions are sometimes compromised because the arresting peace officer either did not follow proper testing protocol or failed to document results adequately. For example, while judges did not note this as being much of a problem, some of the prosecutors expressed concerns about law enforcement officers failing to collect two BAC samples or failing to wait the appropriate time for testing.

   Regarding the second issue, most prosecuting attorneys and judges interviewed stated that offenders who refuse to take BAC tests (about 4.9% statewide) are usually charged and prosecuted. This is partly supported by the fact that 68% of 2006 DUI offenders who refused to take the BAC test were eventually convicted. However, defense attorneys felt that DUI cases that go to trial might be more likely to be acquitted if the offenders refused to take the BAC tests.

   For the third issue, counties with higher DUI conviction rates tend to convict for DUI at lower mean BAC levels. From the survey, majorities of all four job classifications considered low BAC levels to 'often' support alcohol-reckless convictions. While low BAC levels are more likely to result in a reduction to alcohol-reckless convictions, counties vary significantly regarding the BAC level at which this occurs. The lowest mean county BAC for 2006 alcohol-reckless convictees (other than two counties with

zero alcohol-reckless convictions) was 0.078%, while the highest mean county BAC level among alcohol- reckless convictees was 0.111%, which is significantly above the illegal limit of 0.08%. The three counties with the highest mean BAC level for alcohol reckless all have lower than average DUI conviction rates and have alcohol-reckless conviction rates at 13% and above.

Lastly, counties with higher DUI conviction rates tend to use blood BAC tests more often than other types of BAC tests. Blood tests are more reliable and accurate than breath tests and give very definitive BAC levels, which make their results less likely to be challenged by defense attorneys. Blood tests must be taken in a medically approved manner after a lawful arrest and with the consent of the driver. However, use of blood tests can jeopardize DMV administrative license suspension actions because of stringent requirements for training individuals who analyze blood tests and restrictive time requirements for reporting lab results to DMV.

3. *Pled-Down Convictions*

There is also wide variation across counties in the percentages of DUI arrestees who are convicted of pled-down charges such as alcohol-related reckless or non-alcohol-reckless driving, which results in similarly wide variation in DUI conviction rates across counties. The 2000-2006 statewide average percentage of DUI arrestees who were convicted of alcohol reckless was 8%, but the county-specific percentages ranged from a low of 0% to a high of about 23%. The most commonly identified factors from the survey for supporting plea bargains are low BAC levels and the specific facts of the cases.

4. *Prosecution Caseload*

There were varying findings regarding the contribution of prosecutor case overload to differences in county DUI conviction rates. Almost all of the interviewed prosecuting attorneys reported "high" caseloads, and most stated that the high caseload occurs constantly. Among the few who reported moderate caseloads, one prosecutor noted that the judge does not allow continuances requested by the defense, which keeps the court calendar from being overloaded. Most of the judges do not feel that high caseloads lead to increased alcohol-reckless plea bargains. However, higher county violent crime rates, which were used as a surrogate measure of prosecutor caseload, were found to be significantly associated with lower DUI conviction rates, possibly because prosecutors

necessarily give higher priority to prosecuting violent crimes over DUI. This relationship was not evident in all counties, which suggests there are undoubtedly factors other than case overload that contribute to the variation in county DUI conviction rates.

5. *Timeliness of DUI Convictions*

Counties with shorter average lengths of time between DUI arrests and convictions tend to have higher DUI conviction rates. According to some interviewed respondents, when convictions are not delayed because of defense continuances, DUI arrestees are less likely to go to trial, be acquitted, or be dismissed because of lack of witnesses or loss of their memory of details over time.

6. *Prosecution Policies and Practices*

Survey respondents strongly perceive that county DUI conviction rates vary because of county differences on prosecutorial practices and policies relating to filing, charging and plea bargaining, as well as issues related to case overload and training/experience of prosecutors. Half of the interviewed judges acknowledged that prosecutorial policies may be lenient due to fewer personnel being available as a result of reduced funding. Private defense attorneys that were interviewed also noted that DUI cases are prosecuted differently across counties, stating that counties vary in the BAC threshold at which a DUI arrest will be prosecuted, and that prosecutors in urban areas with high crime rates and high caseloads are more likely to negotiate reduced convictions. However, they also pointed out that some urban jurisdictions with high caseloads have stringent prosecution policies that are not likely to allow for reduced convictions in DUI cases, even naming specific counties which have high DUI conviction rates. They also noted that courts within the same county also vary in their DUI prosecution policies.

7. *Drugs and Driving*

Over the last decade in California, drug-involved crash fatalities increased by 146%. A majority of the interviewed prosecuting attorneys believe that there have been increases in drug-impaired driving arrests. More than half of the prosecuting attorneys think it is not difficult to obtain a DUI conviction for combined drugs and alcohol, if there is solid field sobriety test evidence and the BAC level for alcohol is 0.08% and above. However, most of the interviewed prosecutors believe it is difficult to convict for drugs-only DUI primarily because there are no scientifically-based per se impairment levels established

for non-prescription and prescription drugs in California. The greater complexity of the effects of drugs, and the difficulty in determining impairment levels because of wide variation of effects at different doses, make per se laws for drugs more difficult to enact and enforce than those for alcohol. There are no devices available like hand-held alcohol breathalyzer devices to detect drugs. Finally, prosecuting attorneys stated that it is difficult to obtain DUI convictions for offenses involving only drugs because there are an insufficient number of qualified drug recognition experts in law enforcement.

<u>Recommendations</u>

Based on the combined results from the three components of this study, the following are recommendations for actions, or acknowledgements/support for efforts already underway, to reduce variation in county DUI conviction rates in California.

1. Reduce the number of delays and continuances granted by the judiciary in DUI cases. This action may reduce the caseload for prosecutors and may also result in more DUI convictions due to improved witness availability and accuracy of testimony for trials. This can also increase the swiftness of adjudication and punishment for the DUI offender, and thus enhance the general deterrence of impaired driving. One avenue to achieve this is to distribute information on lag times of California courts to courts that are identified as having long lag times.

2. Encourage law enforcement through training and outreach efforts to use blood tests for obtaining BAC levels. Results from blood tests are more definitive and less likely to be challenged by the defense, so increased use may result in more DUI convictions. These blood tests should be obtained with the consent of the driver and in accordance with established guidelines where the blood sample is taken in a medically approved manner, after a lawful arrest, and with a reasonable belief that intoxication is present. To avoid difficulties in sustaining APS suspensions when the results for blood tests are challenged in APS hearings, the blood tests should be obtained and tested in accordance with the established guidelines and reported expeditiously to DMV. The benefit of blood testing could be included in the various training programs for law enforcement.

3. Encourage the prosecution of DUI at BAC levels of 0.08% and above, and discourage reduced alcohol-reckless convictions at BAC levels near the illegal limit. This would

reduce the considerable variation among counties regarding the BAC levels at which alcohol-reckless cases are being convicted, which should result in more DUI convictions.

4. Support legislation, such as the proposal developed by SHSP Challenge Area #1 (Reduce Impaired Driving Fatalities) to differentiate in the vehicle code DUI offenses involving drugs from those for alcohol. Because both alcohol and drug DUI arrests and convictions are currently charged under the same CVC sections, it is not possible to distinguish between alcohol and drug offenses, which makes it difficult to determine the extent of drug-related driving, the effectiveness of drug-related countermeasures, and the impact of efforts by law enforcement and prosecution to cite and convict these offenders. Currently, only two U.S. states (Hawaii and New York) have separate statutes for alcohol DUI and drug DUI violations. This proposal has precedence in the California laws prior to 1982, when misdemeanor and felony drug DUI were charged separately from those for alcohol DUI (CVC §23105 drug misdemeanor; CVC §23106 drug felony).

5. Support legislation, such as that proposed by SHSP Challenge Area #1, to establish zero tolerance for any amount of drugs in the driver's system (for drugs listed in H&S §11550). Currently 15 states in the U.S. have zero tolerance per se laws for drugs, and two more states make it illegal for drivers under 21 years old to have any amount of specified drugs in their systems when driving.

6. Train more law enforcement officers in the Advanced Roadside Impaired Driving Enforcement (ARIDE) program offered by CHP (16 hours of training), and in the Advanced Drug Recognition Experts training program (108 hours + plus biannual recertification). This will require continued dedicated funding from the Office of Traffic safety or other sources.

7. Encourage prosecuting attorneys and law enforcement to attend training programs provided by the Traffic Safety Resource Program (TSRP); the TSRP has been awarded continuing grant funds from OTS to provide mentoring and specialized training to both prosecutors and law enforcement in prosecuting DUI, evaluating vehicular felony and misdemeanor cases, and collision reconstruction. Special focus should be given to provide this training to counties with lower than average DUI conviction rates.

8. Initiate new efforts and strengthen existing ones, to change the traffic safety culture in California, especially regarding the use of alcohol/drugs and driving. Changing the public's attitudes, beliefs and norms about impaired driving can increase general deterrence, and help shift support for additional resources and training, and increase commitment to detecting, prosecuting, and sentencing impaired drivers.

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INTRODUCTION

The California Driving Under the Influence (DUI) Management Information System (DUI-MIS) was first created in 1991 in response to Assembly Bill 757 (Friedman) enacted in 1989. This legislation mandated the creation of a statistical reporting system for monitoring the performance of system components involved in controlling drunk driving in California, and the submission of an annual report of its findings to the Legislature. To provide objective data on the operation of the DUI system, DUI data are combined and cross-referenced from diverse sources, such as from the California Highway Patrol (CHP) for crash data, the Department of Justice (DOJ) for the DUI arrest data, and the Department of Motor Vehicles (DMV) driver record database for the DUI conviction data, which is originally sent from all California courts. The primary goal of the DUI-MIS is to track the processing of offenders through the DUI system, from arrest through adjudication, to treatment and license control actions.

One of the main areas of concern regarding the processing of DUI offenders in California has been the proportions of DUI arrestees that are actually convicted of DUI and related offenses by courts. In the DUI-MIS reporting system, this "DUI conviction rate" is defined as the number of DUI convictions divided by the number of DUI arrests per given year of arrest. Plea bargained convictions are classified separately from DUI convictions, and failures-to-appear (FTA) are also excluded in the calculation of the conviction rates (FTAs are not convicted until the offenders appear in court). DMV is notified by the courts of those who fail to appear, and the percentage of FTAs is calculated per county based on county arrests.

The probability of DUI arrest is low because it is difficult to identify DUI offenders (Beitel et al., 2000). Given the difficulty in apprehending DUI offenders, it is important that those who are actually arrested be convicted (assuming valid arrests) so that they receive the appropriate penalties and sanctions. Furthermore, offenders who are not convicted of DUI or the reduced charge of alcohol-reckless are not subject to tougher repeat offender penalties if they re-offend. DUI arrestees who are convicted of alcohol-reckless offenses (i.e., plea bargains) escape the stiffer penalties of a DUI conviction and instead receive shorter alcohol education programs, lower fines, and optional jail terms.

Statewide, the DUI conviction rate has improved over time, from 64.2% among 1989 DUI arrestees to 79.4% for 2006 arrestees, with an average statewide DUI conviction rate of 77.4% across 2000–2006. In general, the conviction rates have also improved for all 58 counties during

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this period, though the actual rates vary considerably among counties (Figure 1). For example, county DUI conviction rates averaged across 2000–2006 range from a low of 41.1% in Trinity County to a high of 91.9% in Placer County. The mean (unweighted) county DUI conviction rate was 74.1%, with an average difference from this mean of 11.8 percentage points. About a quarter of the average county DUI conviction rates were 67.5% or lower and a quarter were 83.1% or higher. Identifying factors associated with the wide variation in these county DUI conviction rates was one goal of the present study. In the process of conducting this study, various issues arose that brought into question the accuracy of these rates, although these issues may not necessarily affect the relative degree of low versus high rates among counties. This is because most of the problems identified, which are discussed in detail later, appear not to differ by county.

Counties also vary in the proportions of offenders whose DUI arrests were plea bargained to convictions of lesser offenses, the most important of these being alcohol-related reckless convictions. Over time, the statewide proportions of alcohol-related reckless convictions have basically not changed, from 7.5% in 1989 to 7.9% in 2006, with an average of 8.1% across 2000–2006. However, counties varied significantly in conviction rates for alcohol-reckless averaged across 2000–2006, ranging from 0.0% in Ventura and Marin Counties to 22.6% in Del Norte County. Some of the very small counties had relatively high alcohol-reckless conviction rates. Overall crash rates among alcohol-reckless convictees have been generally higher than the rates of both first-and second-DUI convictees, though alcohol-reckless convictees tend to have lower DUI recidivism rates. Differences in county salcohol-reckless conviction rates is one factor that helps to explain differences in county DUI conviction rates. If other reasons for low DUI conviction rates in some counties can be discovered and remedied, the overall statewide DUI conviction rate can be increased and variation in DUI conviction rates among counties can be reduced.
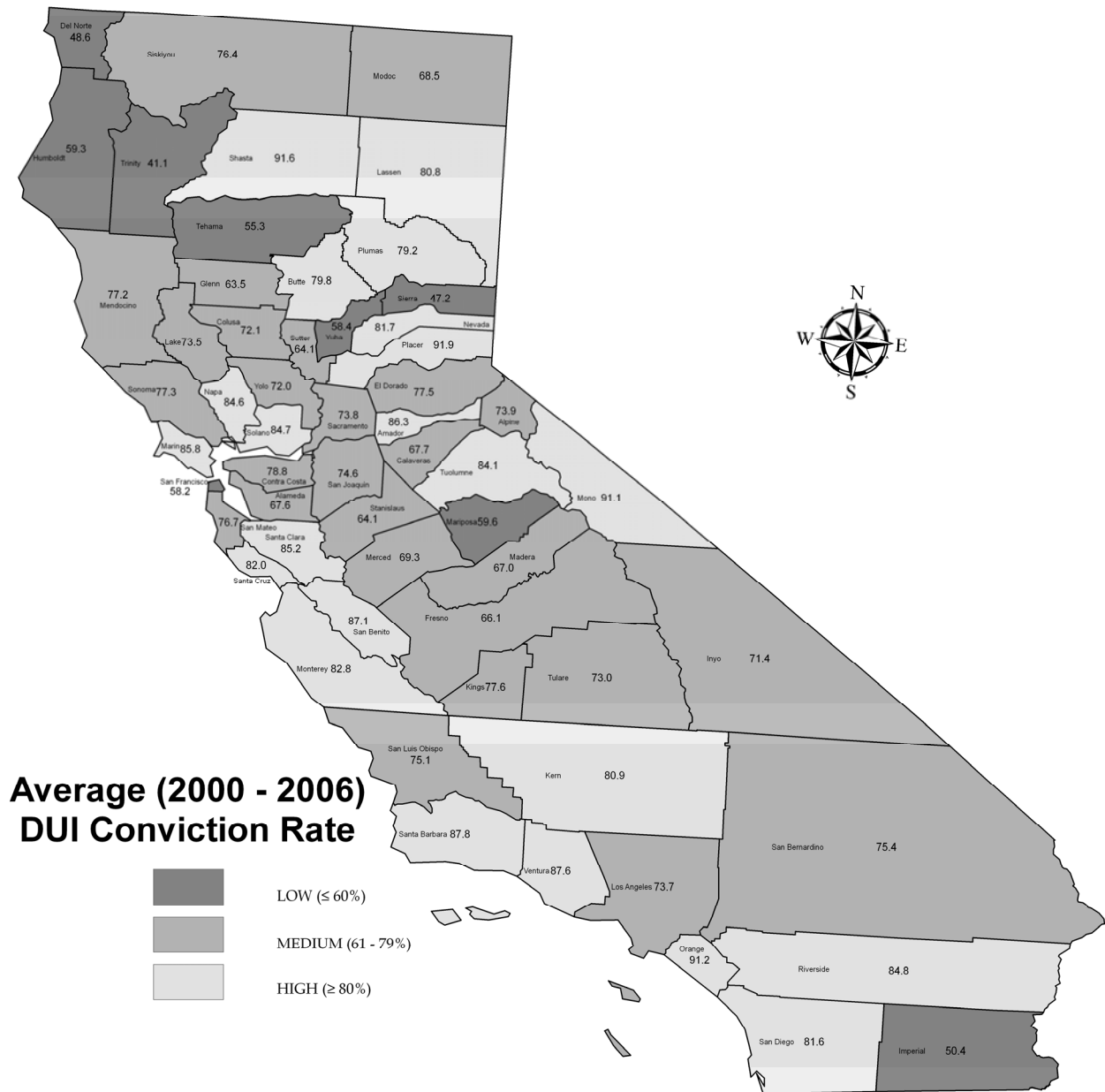
Figure 1. Average 2000-2006 driving under the influence (DUI) conviction rates by California county.

Prior Research

To establish a clear and precise definition of conviction rate, Jones, Wiliszowski, and Lacey (1999) examined different procedures and formulae for calculating DUI (or driving while intoxicated [DWI]) conviction rates across a wide range of sites in different U.S. states. Specifically, they obtained actual counts of DUI arrests and convictions from 10 sites and summarized and compared the conviction rates that were developed from those sites. They found considerable variation among and within jurisdictions in calculating and reporting the DUI conviction rates. In conclusion they recommended that "NHTSA should consider the true conviction rate to be the number of [DUI] convictions resulting from and divided by the number of [DUI] arrests in a given time frame" (Jones et al., 1999, p. 56). They discouraged including FTAs and plea bargained (e.g., alcohol-reckless) convictions in the DUI conviction rates unless it is clearly explained that they are included. Finally, they supported obtaining information from the use of statewide case tracking systems that derive information from a uniform traffic citation. Hence, their conclusions support the procedures that have always been used for calculating DUI conviction rates in the California DUI-MIS report.

Only a few studies have been conducted evaluating differences in DUI conviction rates by county, and exploring factors related to these differences. Kunitz, Zhao, Wheeler, & Woodall, (2006) reviewed the available literature, and found that studies of variations among courts or jurisdictions mainly focused on differences in sentencing rather than factors associated with convictions, and these studies took place in higher courts rather than the lower courts which process the majority of DUIs. The authors noted that there have been very few investigations exploring the role of extra-legal factors in decisions made by the lower courts, which adjudicate misdemeanor DUIs.

These authors found that DUI conviction rates vary among the courts within San Juan County, New Mexico, and they studied the relationship of extra-legal factors with the likelihoods of conviction and sentencing outcomes of DUI offenders there. They determined that the extra-legal factors of defendant ethnicity, age, and gender, along with the specific court of adjudication, and particularly the presence of a defense attorney, contributed significantly to the conviction and sentencing of misdemeanor DUI cases. DUI offenders who used attorneys were less likely to be convicted, but if convicted, tended to receive reduced jail times but higher fines. Waiving the right to an attorney occurred more often among Native American defendants than among Hispanic and non-Hispanic defendants, and the Native American defendants were also more likely to be sentenced to a detention/treatment program. Higher blood alcohol

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concentration (BAC) levels and numbers of prior arrests were associated with an increased likelihood of conviction and more severe sentences. They concluded that the "Likelihood of conviction and severity of sentences are both determined by, extra-legal factors, resulting in inconsistent application of the law" (Kunitz, Zhao, et al., 2006, p. 6).

In the only known study that explored differences in DUI conviction rates among counties within a state (Kunitz, Delaney, et al., 2006), the researchers investigated the relationship of contextual factors (e.g., county population density and general political culture) to variations in DUI conviction rates among all counties of New Mexico. Average annual DUI conviction rates from 1990–2000 of those arrested for DUI in New Mexico's 33 counties ranged from 58% to 95%. The goal of the study was to determine which contextual factors were associated with these large differences in county DUI conviction rates. Among the contextual variables considered was political culture, which was defined as the proportion of the voting population in each county who voted for the republican (conservative) or democratic (liberal) candidate in the 1996 presidential election. This surrogate measure was found to be correlated in the expected manner with scores from a self-identified political ideology scale collected from a sample of respondents from the counties. Higher DUI conviction rates were found to be associated with increased political conservatism at the county level.

Another contextual factor considered by Kunitz, Delaney, et al. (2006) as possibly associated with differences in county DUI conviction rates was court efficiency, which was defined in their study as the average length of time (in days) between DUI arrest and either conviction or dismissal. The correlation between county DUI conviction rates and average days to conviction was negative and significant, indicating that the longer the delay in adjudication, the lower the probability of conviction. They noted that the most urban courts were the least efficient in processing cases, possibly because they have a lower number of judges per capita, and are more likely to have a higher proportion of DUI cases involving defense attorneys. To test this hypothesis, the authors also considered court crowding, as measured by the log of the number of judges per 1,000 DUIs, as a contextual factor potentially associated with differences in county DUI conviction rates. Of particular interest is that when both average days to conviction (court efficiency) and numbers of judges/1,000 DUIs (court crowding) were used to predict DUI conviction rates, the authors stated that "only the number of judges/1,000 DUIs is significant in an Ordinary Least Squares (OLS) regression approach" (Kunitz, Delaney, et al., 2006, p. 606).

Finally, Kunitz, Delaney, et al. (2006) found that higher DUI conviction rates were associated with lower DUI arrest rates and also lower alcohol-involved crash rates. They argued that higher

arrest rates contribute to court crowding, which subsequently leads to lower conviction rates. However, they suggested the possibility, from a deterrence point of view, that higher conviction rates may contribute to lower DUI arrest rates, as well as contributing to the lower rate of alcohol-involved crashes.

<div align="center">Study Goals</div>

The goals of this study are:

- to collect objective information on DUI arrest and adjudication processes in California counties with both high and low DUI conviction rates,

- to supplement the objective information with detailed information collected through face-to-face interviews and through surveys from those involved in apprehending and adjudicating DUI offenders, and

- to recommend changes to current processes based on the objective and subjective information collected that can lead to increased DUI conviction rates overall and to reduce variation in those rates among California counties.

This is a significant step towards improving the deterrence of drinking and driving and ultimately reducing its incidence. The importance of this study was recognized by the Reduce Impaired Driving Fatalities Workgroup (Challenge Area #1) within the California Strategic Highway Safety Plan (SHSP), which included the present study as an action item (1.7).

METHODS

Overview

In order to investigate differences in DUI conviction rates among California counties and the factors associated with these differences, both quantitative and qualitative methods were used. The following are the three avenues used for collecting data in the present study:

1. survey questionnaires were sent to judges, prosecuting attorneys (Deputy District Attorneys- DDA), defense attorneys (public and private), and court administrators;

2. face-to-face interviews were conducted with judges, prosecuting attorneys, and defense attorneys (public and private) from various urban and rural regions in California; and

3. aggregated data of various county-related variables that include demographic and socioeconomic factors, DUI arrest and conviction process measures, and crash and recidivism variables were analyzed.

Development and Administration of Surveys

In order to obtain county-specific information on adjudication processes and better understand the policies and procedures involved in adjudicating DUI offenders, a survey questionnaire was developed for judges, and prosecuting and defense attorneys (Appendix A). Topics covered on the survey included acceptable conditions for agreeing to alcohol- and non-alcohol-reckless convictions and dismissals, and acceptable BAC levels for these pled-down convictions. In addition, prosecuting attorneys and defense attorneys were asked their opinion about whether current DUI laws mandate appropriate sanctions, or whether they should be changed. A survey questionnaire with some objective questions relating to fines and other court administrative issues was also constructed for court administrators (Appendix A). These survey questions were initially reviewed by staff from relevant DMV units who conduct business with the court system, and were modified according to suggestions that were offered. Subsequently, the surveys were given to a small pilot group of judges, and prosecuting and defense attorneys, who reviewed the questions for accuracy of content, proper word usage, and coverage of the appropriate legal processes. Modifications to the survey were made based on the feedback received from these sample respondents.

The actual surveys were created and administered using the Survey Monkey website (www.surveymonkey.com), though respondents were also given the option of completing paper versions of the surveys (Appendix A). Letters requesting participation ($n = 761$) and paper versions of the online surveys were sent by mail and email in late May 2009 to California presiding judges, court administrators, district attorneys, public defenders, and private defense lawyers who were identified from their respective professional directories. The presiding judges, district attorneys, and public defenders were asked to distribute the survey to their staffs who were most involved with DUI cases. Emails and telephone calls were made in response to questions from prospective respondents. At the end of July 2009 a second wave of the surveys was sent to the non-respondents. Responses from the paper surveys were input into the Survey Monkey website, which was also used to aggregate all responses for analysis purposes.

<u>Development and Administration of Interview Protocols</u>

In order to conduct personal face-to-face interviews with judges, prosecuting attorneys (DDA), and defense attorneys, interview protocols were developed based in part on responses gathered from the surveys (Appendix B). Separate interview protocols were developed for each of the job categories, although there were some overlapping questions. The interview questions covered a wide range of issues related to the DUI conviction process and to possible factors that contribute to the variation in DUI conviction rates among counties. These interview questions were reviewed and critiqued by a pilot sample of respondents from each of the four respective groups of judges, prosecutors, public defenders, and private defense attorneys. The questions were further modified and refined after practice interviews were conducted.

Interviews were conducted by the Institute of Social Research (ISR) at California State University, Sacramento through an Inter-Agency Agreement with CA DMV. ISR conducted face-to-face interviews with persons from each of the four job groups representing urban/rural regions of California (northern-rural, central-rural, southern-urban, and Bay Area-urban). The reason that the interview sample was stratified by geographic region and level of urbanization was to try to obtain responses that would be representative of the entire state and it was suspected that DUI conviction practices may vary as a function of these factors.

Initial contact letters requesting interviews along with assurances of confidentiality (Appendix B) were sent by the CA DMV Research & Development Branch (R&D) to 125 individuals distributed among the four job classifications and the four urban/rural regions of the state. Follow-up telephone calls were made by the two ISR interviewers to set up the interview

appointments. Prior to the interviews, R&D staff briefed the ISR interviewers on background information relevant to the project, including summaries of responses to the surveys and DUI issues, and also assisted with practice interviews. The actual interviews took place between April and June 2010.

In addition to audio recordings of the interviews, transcriptions of the interviews and field notes were provided by ISR at the end of July 2010. After organizing the interview questions into 12 main topics (e.g., training, BAC levels and testing, caseload, difficulty with drug convictions, etc), transcripts of the interviews were coded for the main attributes and several in-depth layers of topics, using NVIVO (ver. 8) qualitative analysis software. The numbers of responses for each of the categories were quantified and then summarized.

<div align="center">Aggregated Data Collection and Analysis</div>

The goal of the aggregated data analyses was to identify various county-related variables including demographic and socioeconomic factors, DUI arrest and adjudication process measures, and crash and recidivism variables that are associated with county variations in DUI conviction rates. This section describes the processes used to collect and aggregate these variables and conduct the statistical analyses.

Outcome Measure – County DUI Conviction Rates

DUI conviction rates are reported in DMV's DUI-MIS annual reports for the years 1989 to 2009 (Oulad Daoud & Tashima, 2011). Consistent with national standards (Jones et al., 1999), DUI conviction rates are calculated by dividing the number of DUI convictions (California Vehicle Code [CVC] Sections 23140, 23152, and 23153; California Penal Code Sections 191.5, 192C3; U.S. Codes J36FR46 and J36423; and out-of-state DUIs) by the number of DUI arrests reported by the DOJ for these same offenses for the same calendar year. All DUI convictions are initially extracted from the monthly DMV DUI abstract update files, which contain all DUI and alcohol-related reckless convictions reported to DMV by courts. The DUI arrests are reported to the DOJ by local police departments, sheriffs' offices, and the CHP. By way of agreement between DOJ and DMV's Research & Development Branch, DOJ has been providing the DUI arrest data in an aggregated file for each year since 1990. The DUI conviction rates are calculated for the state overall as well as for each county, but county-specific rates are only available in the annual DUI-MIS reports up to the 2009 report (2006 data) for reasons discussed below.

Beginning about 2002 some anomalies appeared in the county DUI conviction rates that raised concerns about their validity. Specifically, it was noted that: (a) for some rural counties there appeared to be an over-count of DUI arrests relative to the reported numbers of DUI convictions, resulting in very low conviction rates for these counties; and (b) for some counties DMV received higher numbers of DUI convictions than there were DUI arrests reported by DOJ, resulting in conviction rates for these counties of 100% or higher. These anomalies are germane to the current study since they contribute to differences in county DUI conviction rates, and therefore, were investigated as part of this effort.

An investigation into the counties with very low conviction rates revealed that in these counties duplicate arrest dates were sometimes being reported for the same DUI incident. This was because post-conviction bookings (e.g., intake for alternate sentencing programs) were being reported in addition to the original arrest for the same DUI incident. Duplicate arrests are removed from the DOJ arrest file prior to calculating DUI conviction rates based on removing arrests that have the same arrest date and personal identifiers. Because some counties were reporting different arrest dates for the same DUI incidents, the duplicates were not being properly removed. This problem was evident in five rural counties (Trinity, Sierra, Glenn, Tehama, and Yuba) and was reported to DOJ in a request that they ask these counties to stop reporting post-conviction bookings as arrests.

The counties with dubiously high conviction rates were also investigated. The problem of their having more convictions than arrests is complex and appears to be a result of multiple causes: (a) some counties were found to have duplicate convictions that were not detected and removed based on our screening procedures using violation date and docket number because some prosecutors altered the violation dates to an "on or about date;" (b) there was evidence of a small numbers of cases where some individuals were arrested in one county, but convicted in another county (possibly travelers), resulting in an undercount of arrests for one county and over-count of convictions for the other; (c) some of CHP's jurisdictions overlap more than one county, which sometimes results in the arrest being reported in one county and the conviction in another; and lastly, (d) there appears to be some DUI arrests that are apparently not in the DOJ arrest file - these were identified by comparing the counts of DUI arrests in DOJ's file with counts of administrative per se (APS) cases reported independently to DMV by law enforcement. These non-matching cases are still being investigated.

While the statewide DUI conviction rate is fairly stable across time, the rates for individual counties, particularly small counties, fluctuate much more from year to year. In order to provide

some stability to these conviction rates, 7-year averages (2000–2006) were used for analysis purposes, similar to the method used in prior research (Kunitz, Delaney, et al., 2006).

Explanatory Variables for County Differences in Conviction Rates

A number of county-level variables were selected as potential "explanatory" factors that might be associated with varying DUI conviction rates among counties. Candidate explanatory variables were identified from prior research evaluating differences in county conviction rates (Kunitz, Delaney, et al., 2006), as well as a review of the DUI process and recidivism variables available in the DUI-MIS and DMV systems. These potential explanatory variables were extracted from various sources and can be roughly organized into four categories: (a) demographic factors, (b) socioeconomic factors, (c) conviction process measures, and (d) crash and recidivism rates. Table 1 shows the potential explanatory variables considered for this study, along with how they were coded for analysis, the source data years, and the actual data sources.

In order to provide stability and comparability with the averaged county conviction rate outcome measure, 7-year averages (2000–2006) were used for explanatory variables where there was notable year-to-year fluctuation, such as DUI arrest rates by county. For some explanatory variables 3- or 4-year averages were used rather than 7-year averages because data were not available for all 7 years. The remaining explanatory variables were selected for the year 2006, since it is the last year of DUI conviction rates used in the study; it is also the last year that DUI conviction rates were reported in the DUI-MIS for counties because of concerns about the anomalies in DUI county conviction rates discussed earlier.

Table 1

County-Level Variables Used in Aggregated Analyses to Explore Differences Among County DUI Conviction Rates

Explanatory variable	Coding	Years and data source
Demographic factors		
Race of DUI arrestees	% White; Hispanic	2006 DUI-MIS
Age of DUI arrestees	% 16-17; 18-20; 21-30; 31-40; 41-50; 51-60; 61-70; ≥71	2006 DUI-MIS
Gender of DUI arrestees	% Female	2006 DUI-MIS
Race of population	% White; Hispanic; Asian; Black; American Indian; Multi-racial	2000-2006 Census Bureau
Age of population	% ≤15; 16-17; 18-20; 21-30; 31-40; 41-50; 51-60; 61-70; ≥71	2000-2006 Census Bureau
Socioeconomic factors		
Presidential candidate voting	% voting for Bush in 2004	2004 DOF
Political party registration	% Republican	2004 DOF
Violent crime rate (court caseload)	Rate per 100,000 population	2006 DOJ
Total crime rate (court caseload)	Rate per 100,000 population	2006 DOJ
Population density	Log population per mile squared	2000-2006 Census Bureau
Urbanicity	% Urban	2006 DOF
Income level	Median income	2006 DOF
Education level	% Graduated high school	2006 DOF
OTS-funded DUI grants (AVOID)	Number of county projects	2006-2007 OTS
Conviction process variables		
BAC tests used for DUI arrestees	% Blood; Breath; PAS; Refusal	2006 APS records
BAC level of DUI arrestees	Mean BAC	2006 APS records
BAC level of DUI convictees	Mean BAC	2006 APS records
BAC level of alcohol-reckless convictees	Mean BAC	2006 APS records
License status for DUI convictees	% Unknown CA license	2000-2006 DMV records
FTA prevalence for DUI arrestees	% FTA	2006 DMV driver records
Dismissal prevalence for DUI arrestees	% Dismissed	2006 DMV JAG report
Average DUI arrest rate	Rate per licensed driver	2000-2006 DUI-MIS
Court lag from violation to conviction	Median days	2004-2006 DUI-MIS
Arresting agency for DUIs	% DUI arrests by CHP	2006 DOJ
Alcohol-related reckless plea rate	% DUI arrestees convicted	2000-2006 DUI-MIS
District Attorney/Investigator staffing	Staff per 100,000 population	2007 DA Directory
Crash and recidivism variables		
1st offender DUI recidivism	% Recidivating in 1 year	2003-2006 DUI-MIS
2nd offender DUI recidivism	% Recidivating in 1 year	2003-2006 DUI-MIS
1st offender total crash rate	Rate per 100,000 offenders	2003-2006 DUI-MIS
2nd offender total crash rate	Rate per 100,000 offenders	2003-2006 DUI-MIS
Alcohol-crash fatal/injury rate	Rate per 100,000 population	2000-2006 SWITRS

Note. DMV DUI-MIS = Driving Under the Influence Management Information System. DUI = driving under the influence of alcohol/drugs. PAS = Preliminary alcohol screening device. BAC = Blood alcohol concentration. DOJ = California Department of Justice. DOF = California Department of Finance. FTA = failure to appear (in court). OTS = California Office of Traffic Safety. CHP = California Highway Patrol. DA = District attorney. SWITRS = Statewide Integrated Traffic Records System. APS = Administrative per se records at DMV. JAG=Justice and Government Branch DMV.

Study Procedures and Statistical Analyses

INITIAL ANALYSES FOR VARIABLE SELECTION

To initially determine which of the potential explanatory variables shown in Table 1 had the strongest associations with county DUI conviction rates, bivariate Pearson correlations were calculated between each explanatory variable and the outcome variable, as well as among the various explanatory variables. Explanatory variables that were found to be significantly correlated with the DUI conviction rates, or for which prior research provided an *a priori* expectation of a meaningful relationship, were retained for possible inclusion in the multi-variable models described below. A more liberal alpha level of .25 was used at this initial stage to keep the pool of variables large and to accommodate the possibility of some explanatory variables being nonlinearly associated with DUI conviction rates. The Pearson correlation coefficient underestimates (attenuates) the strength of association between variables if the relationship is nonlinear. An alpha level of .25 means that an observed relationship between the explanatory variable and DUI conviction rates, or one that is stronger, is deemed to be reliable if it would be expected to occur less than 25 times out of 100 by chance alone. An alpha level of .05 is more common, meaning that the observed relationship is deemed to be reliable if it—or one that is larger—would be expected to occur by chance less than 5 times out of 100. A number of the demographic and socioeconomic variables were found to be highly correlated with each other, so many were eliminated from the final selection of explanatory variables to avoid problems with multicollinearity (i.e., redundancy of variables). Cross-checking the correlations among the demographic factors, socioeconomic factors, conviction process variables, and crash/recidivism variables was completed to prevent this redundancy.

MULTIPLE REGRESSION ANALYSES

The primary statistical procedure used in this study to determine the explanatory factors associated with differences in county DUI conviction rates was Ordinary Least Squares multiple regression analysis. Multiple regression analysis is a statistical procedure evaluating the linear relationship between a combination of factors (variables) and a single continuous outcome variable of interest. In this study the procedure was used to explain the relationship between the various county-level explanatory variables and the observed differences in county DUI conviction rates.

Because multiple regression analysis typically requires a large number of observations (sample) relative to the number of potential explanatory variables, and the sample size for the present study was necessarily limited to the 58 California counties, a procedure called "power analysis" was used to determine the maximum number of explanatory variables that could reasonably be used in the multiple regression models. The power analysis was conducted at an alpha level of .05, with the expectation of a medium effect size (0.333), and a desired statistical power of 80%. This means that it was expected that the explanatory variables would be able to account for—or predict—at least 33% of the variability in county DUI conviction rates, and that there would be an 80% or greater chance of being able to reliably estimate the various regression model parameters. The power calculations suggested that up to six explanatory variables could be supported with the study sample size of 58 California counties, so the final multiple regression models were constrained to have no more than six explanatory variables.

The intention of the multiple regression analyses used in this study is not to predict DUI conviction rates per se, but rather to determine which explanatory variables are the most strongly related to county DUI conviction rates after adjusting for potential confounders. Therefore, in the initial multiple regression analysis, all of the variables of interest were entered into the analysis simultaneously, rather than using alternative variable selection methods such as stepwise, backward, or forward selection procedures. After determining the significance of these variables, a hierarchical or sequential regression analysis was used to enter the explanatory variables in a particular order, one at a time, so that the contributions of the variables entered later are determined after associations for the earlier variables are accounted for. In this case, the earlier variables that were selected consisted of contextual variables that are not readily changeable (e.g., demographic or socioeconomic variables), and the conviction process variables were entered later as there is greater potential for improving DUI conviction rates based on modifying these variables.

Data screening and diagnostics were conducted for the initial set of potential explanatory variables that were selected for inclusion in the multiple regression models to evaluate the normality and linearity statistical assumptions underlying multiple linear regression. Histograms were obtained to determine normality of the data distribution for each of the explanatory variables and DUI conviction rates, and their degree of skewness and kurtosis. The variables were transformed in various ways in an attempt to reduce non-normality (Tabachnick & Fidell, 2001). Specifically, transformation of positively-skewed distributions involved taking the square root of the variable, and for severely skewed distributions, taking the log of the variable. Plots of each explanatory variable with DUI conviction rates along with various diagnostic tests of

residuals were used to check for outliers and ascertain whether the relationships between the explanatory variables and county conviction rates were linear. In the final analysis, it was decided to leave all but one of the variables, which was log transformed, in their original untransformed state.

RESULTS

Component A – Results of the Survey

The first data collection effort used to obtain county-specific information on DUI adjudication processes was a survey questionnaire sent in late May 2009 to 761 presiding judges, district attorneys, public defenders, private defense attorneys, and court administrators.

Survey Response Rates

The survey response rates varied depending on the job position. There was another survey that was sent out close in time to this one, which may have discouraged participation, and/or there may have been limited resources and staff. It is notable that far more prosecuting attorneys (Deputy District Attorneys) responded to the survey than did defense attorneys, possibly because the surveys could have been viewed as being "pro-conviction." Please note that the denominators for the response rates are based only on the number of letters/surveys sent, and are not based on the actual numbers of persons in these positions who work with DUI cases (these numbers are unknown). Among the various job positions the response rates were:

1. Judges: 43.1% (25 / 58)
2. Prosecuting attorneys: 62.8% (86 / 137)
3. Defense attorneys: 6.3% (32 / 508)
   a. Public defenders: 7.8% (10 / 129)
   b. Private defenders: 5.8% (22 / 379)
4. Court administrators: 58.6% (34 / 58)

Given the extremely poor response rate among defense attorneys, the results for this job position should be interpreted with great caution. The response rate for judges would likely be lower than that obtained, because the number of judges is generally greater than one per county, which was the number used as the denominator for calculating their response rate. The survey requests were sent only to the presiding judge of each county, who was asked to forward the surveys to their judges involved in DUI. Hence the response rate for judges should be considered to be only minimally adequate for being able to generalize the survey findings, meaning that responses for this group may not be representative of judges throughout California. Also, persons who responded to the questions for all the job categories may not necessarily be representative of

their populations, since true random samples of the populations were not obtained. Therefore, the following summarized results should not necessarily be generalized beyond those who responded to the questions; the results should be considered primarily descriptive rather than inferential.

Stages Where DUI Cases End – Prosecution and Defense Representation

Prosecuting (DDA) and defense attorneys were asked to estimate the percentages of DUI cases that resulted in a guilty plea (or where cases ended) during different stages of prosecution and the percentages of cases with defense representation. The prosecutors' modal (most frequent) responses indicated that 1–10% of defendants pled guilty at arraignment, 1–10% at trial assignment, and 1–10% of cases ended at a jury/bench trial. There was little agreement among the prosecutors about the percentage of cases ending at pretrial conferences, although the majority of the responses (78%) were consistent with it being 41% or higher, with a mode at 71–80%.

For DUI prosecutions in general, the modal response among surveyed prosecutors indicated that 61–80% of DUI cases were represented by public defenders, 1–20% were represented by private attorneys, and 1–20% had no representation.

The modal responses of public defenders and private defense attorneys were similar to those of DDAs, with their responses most commonly indicating that 1–10% of cases end at arraignment, trial assignment, and at jury/bench trial. Their responses were mixed regarding pre-trial conferences, with a modal response among public defenders indicating that 81-90% of DUI cases end at a pretrial conference and bimodal responses among private defenders of 51-60% and 81-90%.

Views of DUI Laws for First Offenders

Since judges are generally expected to remain neutral or objective about their views on laws, only the prosecuting and defense attorneys were asked their opinions regarding the extent to which various DUI laws mandate appropriate sanctions or need to be changed (Table 2). The three possible response categories for each of the sanctions were *less stringent*, *remain the same*, or *more stringent*. Respondents were asked about the following aspects of DUI laws for both first and repeat DUI offenders at the time of the survey (2009):

- BAC Level at 0.08%
- Jail Time
- Length of DUI Treatment Programs
- License Suspension/Restriction
- Discretionary Ignition Interlock
- Probation Requirements
- Home Arrest, SCRAM, Work Furlough
- Fines & Assessments, Restitution

Table 2

First Offenders: Views of Mandated Sanctions in DUI Laws by Job Classification[a]

DUI law	Sanctions appropriate or need changing			
Job classification	% Less stringent	% Remain the same	% More stringent	*N*
BAC level at 0.08%				
Prosecuting attorneys	2.4	78.8	18.8	85
Public defenders	25.0	75.0	0.0	8
Private defense attorneys	68.2	31.8	0.0	22
Jail time				
Prosecuting attorneys	4.7	42.4	52.9	85
Public defenders	50.0	50.0	0.0	8
Private defense attorneys	50.0	50.0	0.0	22
Length of DUI treatment programs				
Prosecuting attorneys	3.5	78.8	17.6	85
Public defenders	28.6	71.4	0.0	7
Private defense attorneys	59.1	40.9	0.0	22
License suspension/restriction				
Prosecuting attorneys	3.5	64.7	31.8	85
Public defenders	66.7	33.3	0.0	9
Private defense attorneys	72.7	27.3	0.0	22
Discretionary ignition interlock				
Prosecuting attorneys	7.1	58.8	34.1	85
Public defenders	55.6	44.4	0.0	9
Private defense attorneys	59.1	36.4	4.5	22
Probation requirements				
Prosecuting attorneys	1.2	72.6	26.2	84
Public defenders	14.3	85.7	0.0	7
Private defense attorneys	23.8	76.2	0.0	21
Alternatives to jail				
Prosecuting attorneys	3.7	63.0	33.3	81
Public defenders	50.0	50.0	0.0	8
Private defense attorneys	63.6	22.7	13.6	22
Fines & assessments, restitution				
Prosecuting attorneys	5.8	68.6	25.6	86
Public defenders	55.6	44.4	0.0	9
Private defense attorneys	63.6	36.4	0.0	22

Note. BAC = Blood alcohol concentration. DUI = driving under the influence of alcohol/drugs. Percentages may not add to 100% due to rounding. Shaded cells represent the majority response for each job classification.
[a]Not asked of judges.

For first offenders, the majority of DDAs responded 'remain the same' for all items listed, except jail time, for which there was majority support for more stringency. Among the public defenders, a majority responded 'remain the same' for BAC level at 0.08%, length of DUI treatment programs, and probation requirements. However, for jail time and alternatives to jail, they were split evenly for both sanctions between 'remain the same' and 'less stringent.' A majority of public defenders responded 'Less stringent' for license suspension/restriction, discretionary ignition interlock devices, and fines/assessments/restitution. A majority of private defense attorneys responded 'remain the same' only for probation requirements. For jail time, they split evenly between 'remain the same' and 'less stringent.' For all other items, the majority of private defense attorneys responded 'less stringent'.

Views of DUI Laws for Repeat Offenders

The prosecuting and defense attorneys were also asked about their views of the various DUI laws and sanctions with regard to repeat DUI offenders (Table 3). Regarding repeat offenders, 60% of prosecuting attorneys responded 'remain the same' for length of DUI treatment programs, and exactly 50% responded 'remain the same' for fines/penalty assessments/restitution. However, majorities responded 'more stringent' for all other aspects of the DUI laws: BAC level, jail time, license suspension/restriction, ignition interlock, probation requirements, and alternatives to jail. The majority of public defenders responded 'remain the same' for all sanctions and aspects of DUI laws listed with regard to repeat offenders. Similarly, a majority of private defense attorneys voted 'remain the same' on all sanctions, except for license suspension/restriction for which 60% responded 'less stringent' and discretionary ignition interlock, which was split between 'less stringent' and 'remain the same.'

Table 3

Repeat Offenders: Views of Mandated Sanctions in DUI Laws by Job Classification[a]

DUI law	Sanctions appropriate or need changing			
Job classification	% Less stringent	% Remain the same	% More stringent	*N*
BAC level at 0.08%				
Prosecuting attorneys	1.2	41.9	57.0	86
Public defenders	11.1	77.8	11.1	9
Private defense attorneys	38.1	57.1	4.8	21
Jail time				
Prosecuting attorneys	1.2	18.6	80.2	86
Public defenders	33.3	55.6	11.1	9
Private defense attorneys	33.3	57.1	9.5	21
Length of DUI treatment programs				
Prosecuting attorneys	1.2	60.0	38.8	85
Public defenders	11.1	88.9	0.0	9
Private defense attorneys	35.0	60.0	5.0	20
License suspension/restriction				
Prosecuting attorneys	2.4	44.7	52.9	85
Public defenders	37.5	62.5	0.0	8
Private defense attorneys	60.0	40.0	0.0	20
Discretionary ignition interlock				
Prosecuting attorneys	2.4	31.0	66.7	84
Public defenders	25.0	62.5	12.5	8
Private defense attorneys	35.0	45.0	20.0	20
Probation requirements				
Prosecuting attorneys	0.0	42.4	57.6	85
Public defenders	11.1	77.8	11.1	9
Private defense attorneys	20.0	80.0	0.0	20
Alternatives to jail				
Prosecuting attorneys	0.0	42.5	57.5	80
Public defenders	14.3	57.1	28.6	7
Private defense attorneys	33.3	52.4	14.3	21
Fines & assessments, restitution				
Prosecuting attorneys	2.3	50.0	47.7	86
Public defenders	22.2	66.7	11.1	9
Private defense attorneys	42.9	52.4	4.8	21

Note. BAC = Blood alcohol concentration. DUI = driving under the influence of alcohol/drugs. Percentages may not add to 100% due to rounding. Shaded cells represent the majority response for each job classification.
[a]Not asked of judges.

Factors for Supporting Not Filing Any DUI Charges

Only the DDAs were asked how often they would support *not* filing DUI charges for arrestees under various circumstances (Table 4). Majorities of prosecutors responded that they would often/always support not filing charges under only two conditions: when the BAC level is below 0.08% and when the factual circumstances of the case were problematic. Under most remaining conditions listed for not filing DUI charges, the majority of prosecutors responded that they

would never/seldom support not filing charges (i.e. chemical test refusal, the defendant having no prior traffic/criminal history, evidentiary problems with a chemical test, insufficient probable cause for the stop or arrest, police or another witness being unable to testify, negotiations with the defense, court/case overload, or because of jail time served/jail overcrowding). There was no majority response with regard to unavailable chemical or drug tests, or lack of impairment evidence from field sobriety tests (FSTs).

Table 4

Prosecutor Support for Not Filing Any DUI Charges Under Various Conditions

Condition for not filing	Support not filing DUI charges			
	% Never/seldom	% Sometimes	% Often/always	N
BAC < 0.08%	12.8	31.4	55.7	70
Chemical test unavailable (not refusal)	43.4	23.2	33.3	69
Chemical test refusal	85.5	10.1	4.3	69
Factual circumstances of case	10.1	37.7	52.2	69
No traffic/criminal history	100.0	0.0	0.0	69
Evidentiary problems with chemical test	52.1	34.8	13.0	69
Lack of impairment evidence from FST	46.3	30.4	23.2	69
Drug test unavailable	47.8	30.4	21.7	69
Insufficient probable cause	65.7	17.1	17.1	70
Police unable to testify	81.2	10.1	8.6	69
Unavailable witness	85.5	10.1	4.3	69
Negotiations with defense	97.1	1.5	1.5	68
Court/case overload	100.0	0.0	0.0	69
Jail time served/jail overcrowding	100.0	0.0	0.0	66

Note. BAC = Blood alcohol concentration. DUI = driving under the influence of alcohol/drugs. FST = Field sobriety test. Percentages may not add to 100% due to rounding. Shaded cells represent the majority response.

Factors for Supporting Alcohol-Reckless Convictions

All job classifications were asked under which circumstances they would support guilty pleas to CVC §23103.5 (alcohol "wet" reckless convictions) rather than DUI (Table 5).

Table 5

Factors for Supporting Guilty Pleas to VC §23103.5 (Alcohol "Wet" Reckless Convictions) by Job Classification

Condition for plea	Support for alcohol "wet" reckless plea (VC §23103.5)			
Job classification	% Never/seldom	% Sometimes	% Often/always	N
Low BAC level				
Judges	0.0	33.3	66.7	24
Prosecuting attorneys	2.4	9.5	88.1	84
Public defenders	0.0	0.0	100.0	10
Private defense attorneys	9.0	18.2	72.7	22
1st DUI arrest				
Judges	86.4	13.6	0.0	22
Prosecuting attorneys	66.3	16.3	17.5	80
Public defenders	77.7	11.1	11.1	9
Private defense attorneys	40.9	18.2	40.9	22
Young adult				
Judges	95.5	4.5	0.0	22
Prosecuting attorneys	90.2	8.6	1.2	81
Public defenders	100.0	0.0	0.0	8
Private defense attorneys	59.1	31.8	9.0	22
Factual circumstances of case				
Judges	30.4	34.8	34.8	23
Prosecuting attorneys	12.2	28.0	59.7	82
Public defenders	0.0	20.0	80.0	10
Private defense attorneys	4.8	33.3	61.9	21
No traffic/criminal history				
Judges	87.4	8.3	4.2	24
Prosecuting attorneys	72.9	12.3	14.8	81
Public defenders	66.6	22.2	11.1	9
Private defense attorneys	45.4	27.3	27.3	22
Evidentiary problems- chemical test				
Judges	29.1	45.8	25.0	24
Prosecuting attorneys	39.7	38.6	21.7	83
Public defenders	30.0	60.0	10.0	10
Private defense attorneys	22.7	40.9	36.3	22
Lack impairment evidence from FST				
Judges	43.4	43.5	13.0	23
Prosecuting attorneys	48.1	32.5	19.3	83
Public defenders	55.5	22.2	22.2	9
Private defense attorneys	36.3	40.9	22.7	22
Negotiations with prosecution/defense				
Judges	73.7	26.3	0.0	19
Prosecuting attorneys	57.7	30.8	11.5	78
Public defenders	0.0	28.6	71.5	7
Private defense attorneys	4.5	9.1	86.4	22
Judge's recommendation[a]				
Prosecuting attorneys	90.1	7.4	2.5	81
Public defenders	55.6	44.4	0.0	9
Private defense attorneys	90.9	4.5	4.5	22
High fines				
Judges	100.0	0.0	0.0	22
Prosecuting attorneys	93.8	6.3	0.0	80
Public defenders	66.7	33.3	0.0	9
Private defense attorneys	68.2	22.7	9.1	22
Court/case overload				
Judges	100.0	0.0	0.0	21
Prosecuting attorneys	92.5	4.9	2.4	81
Public defenders	100.0	0.0	0.0	9
Private defense attorneys	86.4	9.1	4.5	22
Jail time served/jail overcrowding				
Judges	100.0	0.0	0.0	21
Prosecuting attorneys	97.6	1.3	1.3	80
Public defenders	100.0	0.0	0.0	9
Private defense attorneys	100.0	0.0	0.0	21

Note. BAC = Blood alcohol concentration. DUI = driving under the influence of alcohol/drugs. FST = Field sobriety test. Percentages may not add to 100% due to rounding. Shaded cells represent the majority response for each job classification.
[a]Not asked of judges.

Majorities of all four groups (67–100%) responded that low BAC levels were often/always an important condition to consider for supporting alcohol-reckless pleas, but that the defendants being young adults, high fines, court/case overload, and jail time served/jail overcrowding were never/seldom relevant factors. Majorities of all three groups of lawyers responded that the factual circumstances of the cases were often/always a factor to consider for wet reckless plea bargains. Most public defenders and private defense attorneys responded that negotiations were often/always an important consideration, although a majority of judges and prosecuting attorneys responded that this was never/seldom important. Among judges, prosecuting attorneys and public defenders, majorities responded that the defendants having no prior DUI arrests or traffic/criminal histories were never/seldom factors for supporting wet reckless plea bargains. Public defenders sometimes support reducing convictions to alcohol reckless when there are evidentiary problems with chemical tests. Majorities of DDAs, public defenders, and private defense attorneys stated that they were never/seldom influenced by judge's views of wet reckless pleas.

BAC Levels for Supporting Wet Reckless Plea Bargains

All four groups were asked at which BAC levels they would support a charge/conviction of alcohol "wet" reckless driving (CVC §23103.5) in lieu of a DUI. Figure 2 shows diversity in opinion among the groups. It is clear from the percentages shown in Figure 2 that private defense attorneys are significantly more likely to support a reduction in charges to a wet-reckless offense at relatively higher BAC levels than are respondents in the other three groups. Interestingly, the most commonly indicated BAC level at which judges and prosecutors would support a reduction in charges is 0.09%. Prosecutors are the most likely to support the reduced wet-reckless charge when the arrest BAC level is missing (not refusal), although only 15% indicated they would do so in this situation.
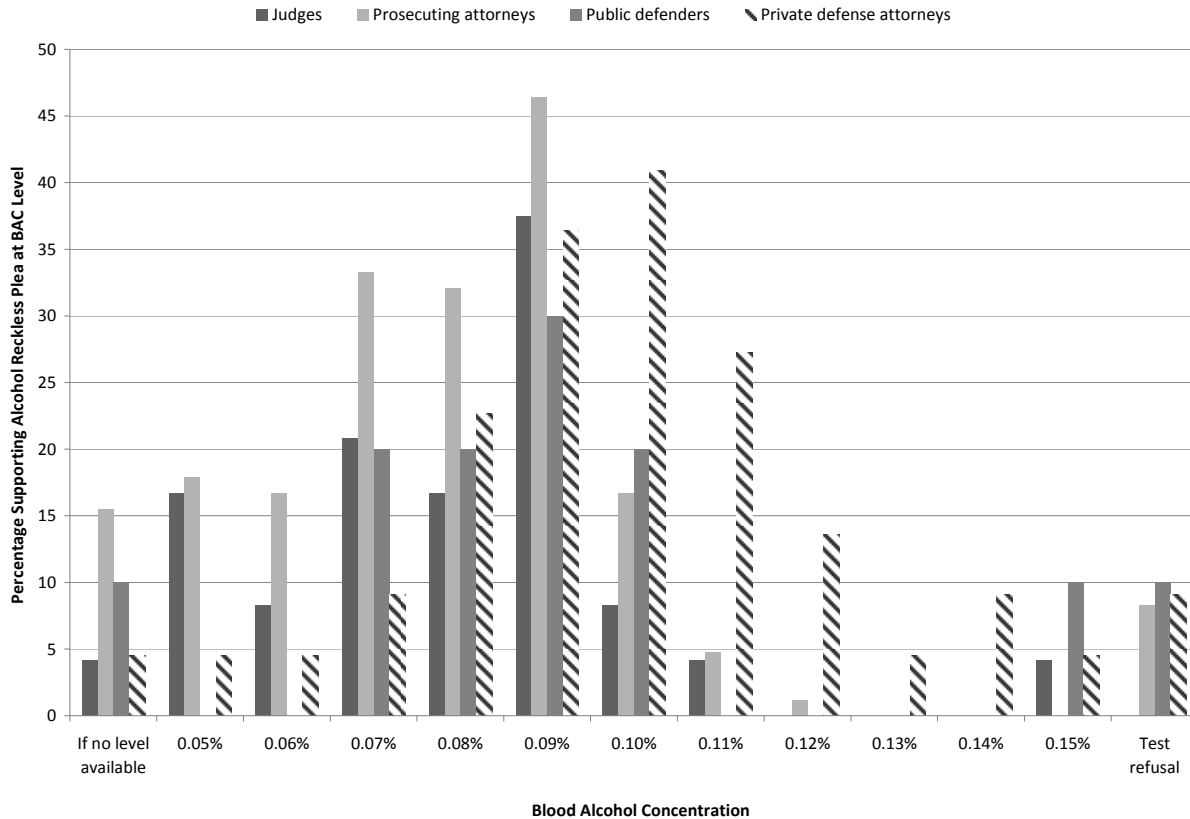
Figure 2. Percentages supporting alcohol "wet" reckless pleas at different BAC levels by job category.

Factors for Supporting Non-Alcohol-Reckless Plea Bargains

All four groups were also asked about the circumstances under which they would support guilty pleas to CVC §23103 (non-alcohol-reckless convictions) rather than DUI (Table 6). Opinions among the job classifications regarding the factors relevant to consider for non-alcohol-reckless pleas were more varied than those for wet reckless pleas. In general, majorities of respondents in all four job categories responded that they would never/seldom support a reduction from DUI to a non-alcohol-reckless violation for most of the conditions listed. This said, a majority of prosecuting and defense attorneys stated that they would often/always consider a reduced plea when the arrest BAC was low, and when the factual circumstances of the case warranted it. And, like the responses to the previous question regarding alcohol reckless, most public defenders and private defense attorneys would often/always consider negotiations as a reason to consider a reduced plea to nonalcohol reckless, but most judges and DDAs would never/seldom do so.

Table 6

Factors for Supporting Guilty Pleas to VC §23103 (Non-Alcohol Reckless Convictions)
by Job Classification

Condition for plea	Support for non-alcohol reckless plea (VC §23103)			
Job classification	% Never/seldom	% Sometimes	% Often/always	*N*
Low BAC level				
Judges	52.1	34.8	13.0	23
Prosecuting attorneys	39.5	3.9	56.6	76
Public defenders	11.1	0.0	88.9	9
Private defense attorneys	9.5	14.3	76.2	21
1st DUI arrest				
Judges	95.4	4.5	0.0	22
Prosecuting attorneys	88.1	2.7	9.5	74
Public defenders	75.0	12.5	12.5	8
Private defense attorneys	42.9	14.3	42.8	21
Young adult				
Judges	95.3	4.8	0.0	21
Prosecuting attorneys	96.0	1.3	2.7	75
Public defenders	75.0	12.5	12.5	8
Private defense attorneys	57.1	23.8	19.0	21
Factual circumstances of case				
Judges	60.9	26.1	13.0	23
Prosecuting attorneys	31.5	13.2	55.2	76
Public defenders	10.0	10.0	80.0	10
Private defense attorneys	4.8	19.0	76.2	21
No traffic/criminal history				
Judges	100.0	0.0	0.0	21
Prosecuting attorneys	93.3	1.3	5.3	75
Public defenders	87.5	12.5	0.0	8
Private defense attorneys	38.1	9.5	52.4	21
Evidentiary problems - chemical test				
Judges	56.5	34.8	8.6	23
Prosecuting attorneys	51.3	14.5	34.2	76
Public defenders	12.5	37.5	50.0	8
Private defense attorneys	23.8	28.6	47.6	21
Lack impairment evidence from FST				
Judges	60.9	26.1	13.0	23
Prosecuting attorneys	63.1	11.8	25.0	76
Public defenders	12.5	37.5	50.0	8
Private defense attorneys	28.6	33.3	38.1	21
Negotiations with prosecution/defense				
Judges	80.0	15.0	5.0	20
Prosecuting attorneys	74.3	16.2	9.5	74
Public defenders	14.3	14.3	71.4	7
Private defense attorneys	14.3	14.3	71.4	21
Judge's recommendation[a]				
Prosecuting attorneys	96.0	4.0	0.0	75
Public defenders	87.5	12.5	0.0	8
Private defense attorneys	85.7	9.5	4.8	21
High fines				
Judges	95.5	4.5	0.0	22
Prosecuting attorneys	97.4	2.7	0.0	75
Public defenders	75.0	12.5	12.5	8
Private defense attorneys	61.9	19.0	19.1	21
Court/case overload				
Judges	100.0	0.0	0.0	22
Prosecuting attorneys	100.0	0.0	0.0	74
Public defenders	100.0	0.0	0.0	8
Private defense attorneys	90.5	0.0	9.6	21
Jail time served/jail overcrowding				
Judges	100.0	0.0	0.0	22
Prosecuting attorneys	100.0	0.0	0.0	75
Public defenders	100.0	0.0	0.0	8
Private defense attorneys	95.3	0.0	4.8	21

Note. BAC = Blood alcohol concentration. DUI = driving under the influence of alcohol/drugs. FST = Field sobriety test. Percentages may not add to 100% due to rounding. Shaded cells represent the majority response for each job classification.

[a]Not asked of judges.

BAC Levels for Supporting Non-Alcohol-Reckless Plea Bargains

All four groups were asked whether they would support a charge/conviction of non-alcohol-reckless driving (CVC §23103) in lieu of a DUI conviction at various BAC levels. Figure 3 shows significant diversity in opinion among the groups. In contrast to their responses regarding reductions to wet-reckless charges, substantially more judges, DDAs and public defenders stated that they would consider reducing the DUI charge to non-alcohol-reckless in situations where information was unavailable on arrest BAC (not test refusals). Similar to the results for wet reckless, private defense attorneys, are more likely than respondents in the other three groups to support reduced charges at higher BAC levels. Finally, all groups are more likely to support reducing DUI charges to non-alcohol-reckless driving at lower BAC levels compared to reductions to alcohol-involved-reckless driving.
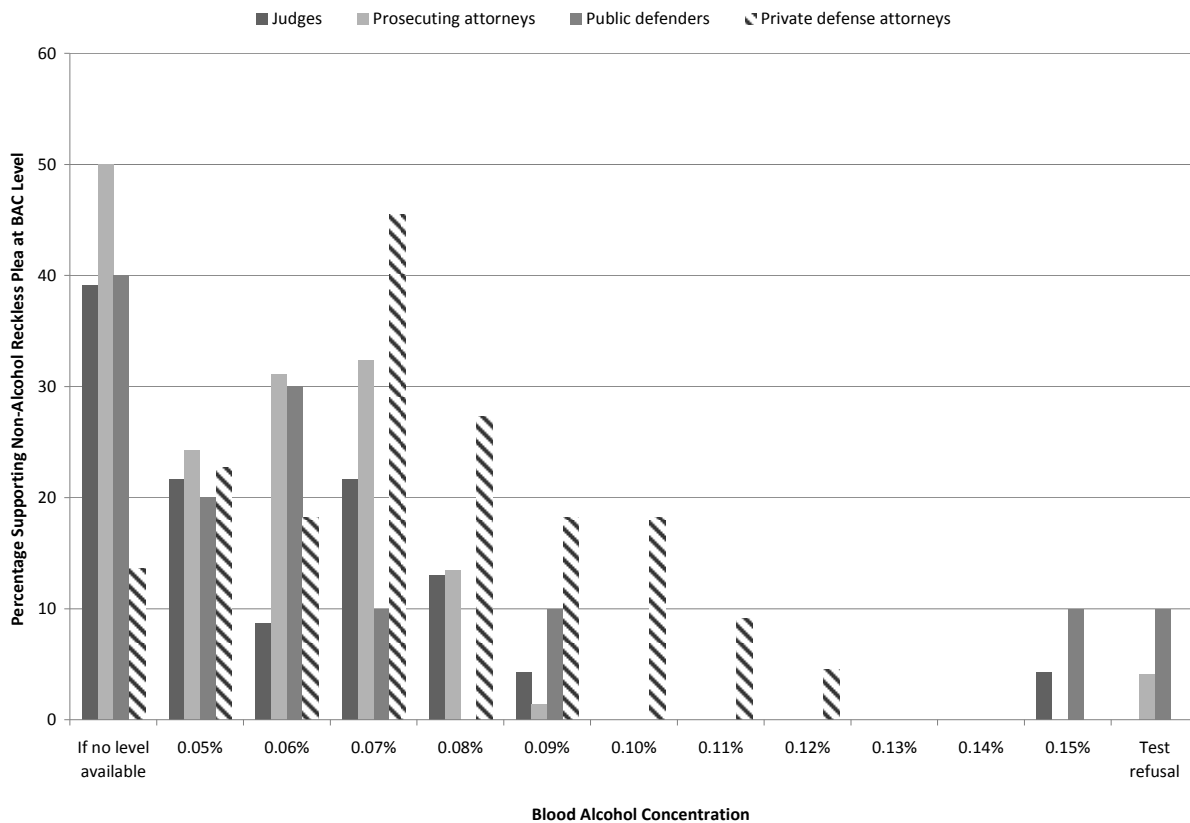

Figure 3. Percentages supporting non-alcohol-reckless pleas at different BAC levels by job category.

Motion to Suppress Hearings

All three groups of attorneys were asked the percentages of their DUI cases that were granted a motion to suppress hearing during the year prior to the survey (Figure 4). Majorities of prosecutors and public defenders responded that 0–2% of cases were granted a motion to suppress hearing, whereas private defense attorneys responded equally that between 0–2% and 3–5% were granted a motion to suppress hearing during the prior year.
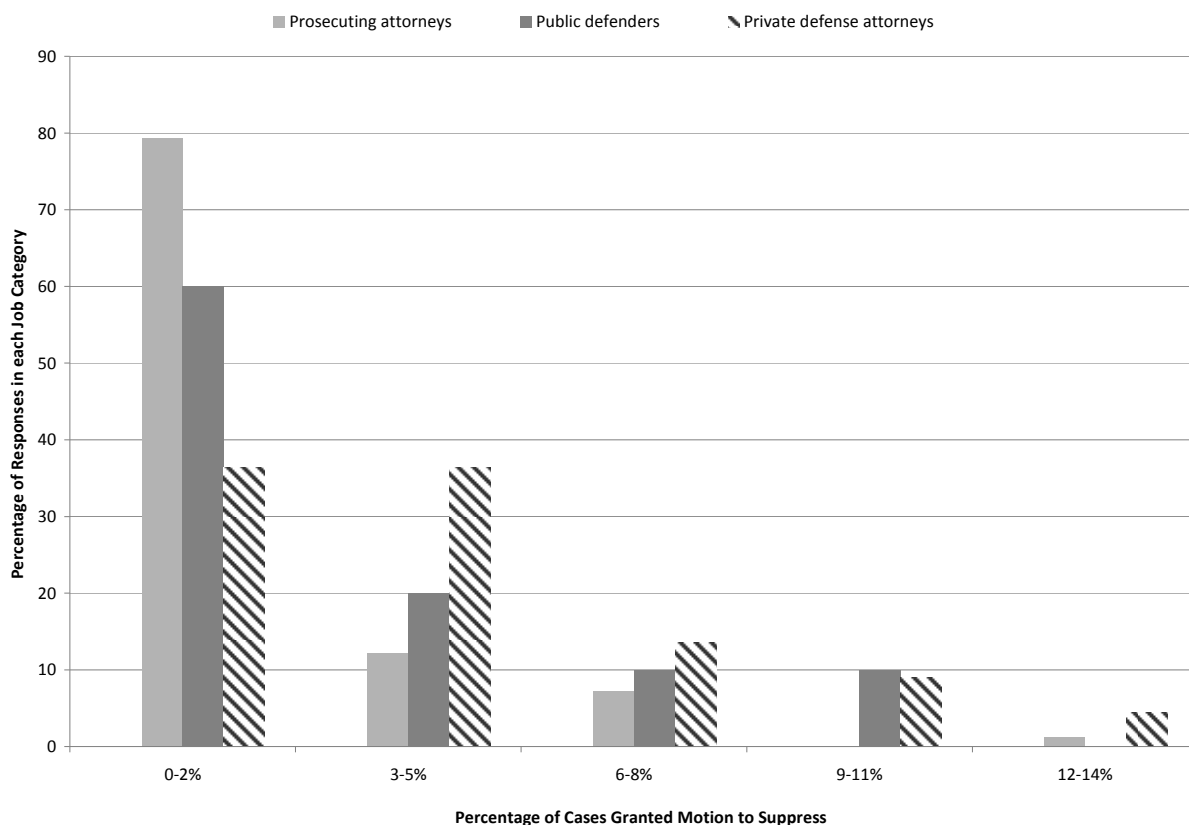

Figure 4. Percentage of DUI cases granted a motion to suppress by job category.

Factors for Supporting Dismissal of All DUI Charges

All four groups were asked how often they would support dismissing all DUI charges under various conditions after a case is filed (Table 7). For factors that should never or seldom be considered, the majorities of all four groups agreed on only two factors, court/case overload and jail time served/jail overcrowding. Public defenders and private defense attorneys were more likely than judges or prosecutors to support dismissing DUI charges under the conditions specified in the survey questionnaire: a majority of these two groups said they would

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Table 7

Factors for Supporting Dismissal of DUI Charges by Job Classification

Condition for dismissal Job classification	Support dismissal of DUI charges			
	% Never/Seldom	% Sometimes	% Often/always	*N*
BAC < 0.08%				
Judges	47.6	23.8	28.5	21
Prosecuting attorneys	66.3	24.7	9.1	77
Public defenders	30.0	20.0	50.0	10
Private defense attorneys	4.5	13.6	81.8	22
Chemical test unavailable (not refusal)				
Judges	30.0	50.0	20.0	20
Prosecuting attorneys	80.5	15.5	4.2	71
Public defenders	0.0	20.0	80.0	10
Private defense attorneys	18.2	22.7	59.1	22
Chemical test refusal				
Judges	90.0	10.0	0.0	20
Prosecuting attorneys	89.4	9.3	1.3	75
Public defenders	77.8	22.2	0.0	9
Private defense attorneys	23.8	57.1	19.0	21
Factual circumstances of case				
Judges	26.0	52.2	21.7	23
Prosecuting attorneys	38.1	44.7	17.1	76
Public defenders	0.0	0.0	10 0.0	10
Private defense attorneys	9.6	14.3	76.2	21
No traffic/criminal history				
Judges	95.2	0.0	4.8	21
Prosecuting attorneys	98.7	0.0	1.3	76
Public defenders	62.5	12.5	25.0	8
Private defense attorneys	40.9	13.6	45.5	22
Evidentiary problems with chemical test				
Judges	35.0	55.0	10.0	20
Prosecuting attorneys	66.3	29.9	3.9	77
Public defenders	11.1	11.1	77.8	9
Private defense attorneys	19.0	14.3	66.7	21
Lack of impairment evidence from FST				
Judges	42.9	42.9	14.3	21
Prosecuting attorneys	70.6	20.0	9.3	75
Public defenders	10.0	30.0	60.0	10
Private defense attorneys	27.3	27.3	45.4	22
Drug test unavailable				
Judges	38.1	52.4	9.6	21
Prosecuting attorneys	76.3	18.4	5.3	76
Public defenders	10.0	30.0	60.0	10
Private defense attorneys	40.9	22.7	36.3	22
Insufficient probable cause				
Judges	23.8	33.3	42.8	21
Prosecuting attorneys	75.4	14.3	10.4	77
Public defenders	0.0	0.0	100.0	10
Private defense attorneys	18.2	18.2	63.6	22
Police unable to testify				
Judges	33.3	42.9	23.8	21
Prosecuting attorneys	74.4	19.2	6.4	78
Public defenders	62.5	0.0	37.5	8
Private defense attorneys	45.5	22.7	31.8	22
Unavailable witness				
Judges	47.6	38.1	14.3	21
Prosecuting attorneys	81.9	15.6	2.6	77
Public defenders	62.5	12.5	25.0	8
Private defense attorneys	57.2	23.8	19.0	21
Negotiations with prosecution/defense				
Judges	70.0	30.0	0.0	20
Prosecuting attorneys	92.1	6.6	1.3	76
Public defenders	33.3	0.0	66.7	9
Private defense attorneys	9.0	27.3	63.7	22
Court/case overload				
Judges	100.0	0.0	0.0	22
Prosecuting attorneys	98.7	1.3	0.0	78
Public defenders	100.0	0.0	0.0	9
Private defense attorneys	86.4	4.5	9.1	22

| Condition for dismissal | Support dismissal of DUI charges | | | |
Job classification	% Never/Seldom	% Sometimes	% Often/always	N
Jail time served/jail overcrowding				
Judges	100.0	0.0	0.0	21
Prosecuting attorneys	98.6	1.3	0.0	75
Public defenders	100.0	0.0	0.0	9
Private defense attorneys	85.0	5.0	10.0	20

Note. BAC = Blood alcohol concentration. DUI = driving under the influence of alcohol/drugs. FST = Field sobriety test. Percentages may not add to 100% due to rounding. Shaded cells represent the majority response for each job classification.

often/always consider such a reduction if chemical test results were unavailable, the factual circumstances of the case support it, there were evidentiary problems with the chemical test, insufficient probable cause existed, or due to negotiations with the prosecutor. In contrast, prosecutors stated that they would either seldom or never support dismissing DUI charges in all but one of the 14 conditions listed. Judges' responses were more similar to prosecutors than to public defenders/defense attorneys; while most never indicated that they would often/always support dismissing DUI charges under the specified conditions, a majority did state that they would sometimes consider doing so under four of the conditions (if the chemical test results were unavailable, the factual circumstances of the case warranted it, there were evidentiary problems with the chemical test, or drug test results were unavailable).

Successful Dismissals of DUI Charges

Only defense attorneys were asked the percentage of DUI cases for which they requested dismissal that were actually dismissed. The majority of both public defenders and private defense attorneys reported that they prevailed in only 0–10% of the cases where they requested a dismissal.

Fines and Assessments: Court Administrators

The court administrators were asked about the total fines and assessments that are charged to DUI offenders in their county based on the offender's number of prior DUI offenses. The modal values of fines and assessments were as follows: first misdemeanor DUI $1501–$2000; second misdemeanor DUI $2001–$2500; third misdemeanor DUI $2001-$2500.

Frequency of Notifying DMV of Failures to Appear and Dismissals: Court Administrators

Among the court administrators who responded to the survey, four were from counties with low DUI conviction rates, while 13 respondents came from counties with high conviction rates.

Therefore, responses for this section of the survey may predominantly reflect the conviction practices of high conviction rate counties.

The court administrators were asked how often they notified DMV when offenders failed to appear (FTA) in court for a DUI charge or the DUI charges were dismissed. Of the responses, 74% indicated that they 'always' reported FTAs and 88% indicated that they 'always' reported dismissals. Only 6% of the court administrators responded that they 'never' reported FTAs or dismissals to DMV, while 8.8% checked 'seldom' for reporting FTAs, and 3% also checked 'seldom' for reporting dismissals. When asked how they reported these events to DMV, 100% responded that they reported FTAs electronically and 97% responded that they reported dismissals electronically.

Responses to Open-Ended Question on Reasons for Varying County DUI Conviction Rates

There was a wide range of responses from the five groups to an open-ended question about their views on why DUI conviction rates vary among counties. However, not all of those who returned the surveys responded to this question. The following are the response rates for this question: judges 52.0% (13/25), prosecuting attorneys 63.5% (54/85), public defenders 70% (7/10), private defense attorneys 81.8% (18/22), and court administrators 58.8% (20/34).

To simplify and streamline these responses, only the topics that were the most commonly mentioned among the groups are presented here. Table 8 shows the percentages of those who responded in each job classification who mentioned each topic. The percentages shown reflect the fact that each respondent could have discussed more than one topic in response to this question. Hence, the percentage base is the number of those who responded to this question. The four topics that were mentioned the most often are as follows:

1. prosecution: differences in filing, charging, and plea bargain standards, practices and policies; high case overload; and need for more training and experience;

2. county culture: differences in politics and voting; population culture/language; demographics; and economic and social status;

3. law enforcement: differences in arresting policies and procedures; experience and training in BAC tests and proper FSTs; recording of details and timeliness of reports; and testifying; and

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4. judiciary: differences in sentencing; insufficient judicial resources; judicial cooperation with prosecution; and court overcrowding.

Table 8

Percentages of Respondents by Job Classification Who Mentioned Each Major Topic
as Reasons for Variation in County DUI Conviction Rates

Topic	Judges (n = 13)	Prosecutors (n = 54)	Public defenders (n = 7)	Private defenders (n = 18)	Court administrators (n = 20)
Prosecution	85%	67%	100%	61%	65%
County culture	52%	17%	71%	22%	40%
Law enforcement	31%	30%	57%	17%	25%
Judiciary	46%	13%	0%	22%	20%

Note. Percentages reflect only those who responded to the open-ended question about reasons for variation in county conviction rates. Percentages do not add to 100% because respondents could mention multiple topics.

It can be seen from the table that respondents in all five groups mentioned that DUI conviction rates vary because of county differences on various prosecutorial issues relating to filing, charging, plea bargaining practices, and policies, as well as issues related to case overload and training/experience of prosecutors.

The next most frequently mentioned factor related to variation in county DUI conviction rates was differences in county culture, which was a common topic among judges, public defenders, and court administrators. These comments were about differences in politics and voting behavior, demographics, culture and language, economics, and social class. Prosecutors and private defense attorneys did not comment on county culture as often as the other three groups; the table above shows that 17% and 22%, respectively, of these two groups viewed county culture differences as contributing factors to county DUI conviction rate variation.

For prosecutors, the second most frequently mentioned topic (30%) in regard to differences in county DUI conviction rates was issues related to law enforcement. This area was the third most frequently mentioned topic for judges, public defenders, private defense attorneys, and court administrators. Comments related to this topic discussed differences in arresting policies and procedures, inexperience and training for BAC testing, proper FST procedures, thorough recording of evidence, timeliness of reports, and witnesses testifying.

The fourth most common topic mentioned as a contributing factor to variation in county DUI conviction rates was differences in judiciary practices. It is interesting to note that 46% of the judges themselves mentioned this area, which was much higher than for all of the other job classifications. These comments related to differences in judicial sentencing, insufficient judicial resources, court overcrowding, and judicial cooperation with prosecution.

Other topics that were discussed less frequently in response to the open-ended question, but which are still worth mentioning are: (a) differences in dealing with technical issues such as insufficient BAC tests, (b) quality of lab analysis, (c) quality of expert testimony, (d) juror composition and attitude toward prosecution and DUI, (e) education of the public on DUI including grass roots efforts (e.g., MADD), (f) DUI task forces and checkpoints, and (g) jail overcrowding.

<div align="center">Component B - Summary of Responses to Interview Questions</div>

The second data collection strategy used to study why DUI conviction rates vary among California counties involved in-person interviews of a sample of prosecuting attorneys (deputy district attorneys, DDAs), judges, and public and private defense attorneys from four regions (Northern, Southern, Bay Area, and Central Valley) in California. The interviews, which were conducted by ISR, typically took 1 hour, were digitally recorded (audio), and later transcribed. A total of 37 interviews were completed, with seven from the Northern area, five from the Central Valley, 14 from the Bay Area, and 11 from the Southern area. Of those interviewed, 35% ($n = 13$) were females. At least one interview for each job category was completed in each geographic region, except private defense attorneys in the Northern area. Table 9 shows the distribution of completed interviews as a function of job category and geographical area.

NVIVO software was used to quantify the transcribed interview responses into more specific and in-depth categories. Some of the interview questions were similar for all the positions and others differed; however, the questions for the public defenders and the private defense attorneys were basically identical. The individual responses of the interviewees are not identified by specific counties in order to respect the confidentiality agreement that was made prior to the interviews. A summary of the interview results is presented in the following sections, organized by topic.

<div align="center">33</div>

Table 9

Distribution of Completed Interviews by Job Category and Geographical Area

Area	Deputy district attorneys	Judges	Public defenders	Private defense attorneys	Total
Northern	4	2	1	0	7
Central Valley	2	1	1	1	5
Bay Area	4	4	2	4	14
Southern	5	2	1	3	11
Total	15	9	5	8	37

Length of DUI Experience for All Positions

All interviewees were asked how long they had been involved with DUI cases in their respective positions. The prosecutors were asked whether DUI cases were assigned to new (1 year or less on the job) prosecuting attorneys.

Slightly more than half (eight) of the DDAs had prosecuted DUI cases for a relatively short time (1 to 5 years), while the rest had more years of experience. Similarly, all of the public defenders, except one, had only 1 to 5 years of experience. Private attorneys had more years of experience; all of them had 6 or more years of experience defending DUI cases. Finally, judges had varying years of experience adjudicating DUI cases, with three having 1 to 5 years of experience, and at the other end, three having 16 or more years.

When asked if DUI cases were generally assigned to new (1 year of experience or less) prosecutors, three prosecutors responded "no," eight said they were assigned to prosecutors in their 1st year of experience, two reported DUI cases were assigned to prosecutors with several years of experience because of budget constraints, and three said everyone was assigned DUI cases.

Training of Prosecuting Attorneys (DDAs)

The prosecutors were asked about the type of DUI training offered to new prosecuting attorneys, as well as various other questions related to their own training. The categories under formal

training included seminars and classes offered at the office and classes offered offsite by the California District Attorneys Association (CDAA), Traffic Safety Resource Prosecutor Program (TSRP), the courthouse, and the CHP Academy. Informal training consisted of on-the-job training, mentoring from experienced staff, reviewing manuals and pamphlets from CDAA, and reviewing expert witness transcripts and evidence code. All of the training related to both specific information on DUI issues as well as basic court procedures, including filings and trial processes.

All of the prosecutors interviewed stated that the various types of informal training were available and offered to new and ongoing prosecuting attorneys. Regarding the more formal training, about two-thirds of those interviewed stated that new prosecutors attended the CDAA classes, and about half noted that their own offices provided seminars and classes; a few prosecutors mentioned that training was available to the new prosecuting attorneys at the courthouse and the CHP Academy.

Regarding questions about their own training when they first began prosecuting DUI cases, almost half said they attended the CDAA training classes offered outside of their offices; the majority received informal, on-the-job training through mentoring from more experienced staff, reviewing manuals and transcripts, and attending other informal office classes.

When asked what part of the training was the most useful to them, at least half of the respondents stated that the training regarding the science of alcohol and its impairing effects on driving was very important; an additional three respondents appreciated the information on the effects of alcohol in the blood (especially the rise and fall of the BAC levels over time and partition ratio theory) and information regarding Preliminary Alcohol Screening (PAS) tests. Others found the following to be useful: learning various aspects of the trial process, including practicing mock trials; learning about strategies at each stage of the trial; learning about the evidence code; TSRP training; and observing the more experienced lawyers during the trial process.

A wide range of responses emerged when prosecutors were asked what topics they would have wanted included in their training. Several respondents wanted more training on drugs and driving and on the science of alcohol and its effects on drivers. Others wanted more training on countering defense strategies and/or to have more experience in cross-examination procedures.

All of the prosecutors felt that training in DUI was vital and necessary for prosecutors. Overall, they especially pointed out the importance of gaining knowledge in the following areas:

1. the science of alcohol and its effects on driving,

2. countering strategies provided by the defense,

3. the various types of alcohol tests, and

4. above all, the actual experience of handling DUI cases in training trials to learn more about the optimal ways of proceeding in trials.

Judges were asked if they thought that defense attorneys had greater experience and training in DUI than prosecuting attorneys. One-third felt that the DDAs were already experienced and well trained, whereas two-thirds felt that the DDAs needed more experience and training, especially the volunteer attorneys (in one county). Several judges noted that the private defense attorneys seem to have greater experience and were more specialized in DUI cases than the public defenders. They felt that public defenders had about the same level of experience as the prosecutors.

Some of the concerns expressed by the judges regarding the DUI experience of prosecuting attorneys were the following:

1. DDAs were generally younger than the private defense attorneys,

2. DDAs had high turnover because of limited contracts (3 years),

3. DDAs were in departments that had inadequate funds for hiring.

Judges made the following recommendations to improve training for the prosecutors:

1. increase their experience in trials,

2. develop and enhance their presence and command in court,

3. improve their knowledge of drug effects and chemical testing,

4. improve their public speaking skills, and

5. enhance their experience in jury selection and communicating with the jury.

Training of Defense Attorneys

PUBLIC DEFENDERS

Public defenders were asked how training was administered to new public defenders, both formally and informally. Formal training involved in-office seminars and weeklong classes sponsored by California Public Defender's Association (CPDA). The informal approach included shadowing or being mentored by a more experienced attorney and reviewing manuals and books on DUI. As for areas of training that they thought would be most useful, they suggested more training in trial procedures that included jury selection, cross-examination of experts, and opening and closing statements.

Several public defenders felt that experience itself helps in defending DUI cases at trials and is very necessary in dealing with the complexity of DUI issues. One attorney felt that experience alone does not necessarily make one a better defense attorney, but rather knowledge of FSTs and PAS machines, and providing specific jury instructions, are important.

PRIVATE DEFENSE ATTORNEYS

Most of the private defense attorneys had at least several years or more experience working as defense attorneys, either in one-person offices or in an office with partners. They also defend clients in more than one county (up to five or six counties), as opposed to public defenders, who work only in a single county. The training they reported receiving was both informal and formal. Formal training seminars provided scientific information on predicting BAC level readings over time. Informal training included mentoring and observing and asking questions of more experienced attorneys, and reviewing tapes, books, and manuals.

Private defense attorneys felt that experience in the following areas increased their effectiveness in defending clients: perceiving jury bias, knowing the FSTs and BAC tests, and adapting to different county situations as a result of their exposure to different county practices and conviction sanctions.

When asked in which areas more training would be helpful, they replied that they wanted more knowledge about the effects of alcohol on blood, operation of breathalyzer machines, trial processes involving cross-examinations, perceiving jury bias, DMV hearings, DUI laws, due process, and how proof beyond reasonable doubt is established with juries.

Difficulty Obtaining Witnesses

Only the prosecuting attorneys were asked about the difficulty in obtaining law enforcement and civilian witnesses. Almost all DDAs interviewed stated that it was <u>not</u> difficult to get law enforcement officers to testify as witnesses to DUI arrests. However, they noted that problems sometimes occurred due to the occasional lack of availability of the officers for court appearances due to vacations, rescheduling of shift duty hours, retirements or illnesses of officers, subpoena mix ups, the timing of court continuances, and being called up for military duty because of their reserve status. About half the responses indicated that good communication between the District Attorney's (DA) office and law enforcement is the basis for witness cooperation, as well as for subpoenas requiring their attendance. Regarding the question of having lost cases because law enforcement failed to testify, the responses were split evenly across four categories: 1) not lost, 2) yes lost, 3) occasionally lost, and 4) sometimes lost.

Interviewees were also asked about issues related to civilian witnesses appearing in court; half of the DDA's responses indicated that it was not difficult to get civilian witnesses to testify because they were subpoenaed, and also because the staff maintained good communication with them and were diligent in following up. The other half of the responses indicated that it is difficult to get them to testify because they need to take time off from work; it is especially difficult with ongoing and prolonged continuances, and due to difficulties witnesses perceive in testifying against their friends or relatives. Less important issues the prosecutors identified regarding witnesses testifying were related to there being no pay for testifying, subpoena mix ups, and loss of contact with the witnesses.

Related to the issue of witnesses in DUI trials was a question about whether the defense attorneys delayed trials, and whether this often resulted in the failure of witnesses to appear. Most of the prosecutor's responses indicated that there are definitely delays, some of which they believe are intentional to prevent witnesses from attending, because witnesses' memories for details tend to fade over time; also, defense continuances will delay jail time for DUI offenders. Other respondents indicated that although the defense requests continuances, they did not believe that it was intentional to prevent witnesses from attending the trial; sometimes the defendant does not wish to appear in court.

Prosecutors had the following suggestions for increasing the likelihood of having witnesses appear:

1. maintain good communication and contact between agencies,

2. do not allow further continuances,

3. continue paying peace officers for witness services,

4. develop more resources for pursuing witnesses and pay them when they move away,

5. improve subpoena procedures, and

6. assign a person to be a witness liaison or investigator in DA offices.

Law Enforcement Procedures and Training

DDAs and judges were asked questions related to law enforcement procedures and training. At least half of the prosecutors felt that peace officers could make greater efforts in collecting all of the evidence when arresting DUI offenders. In addition, these prosecutors believe that peace officers should make sure that they ask appropriate and sufficient numbers of questions of the DUI offender and write adequate reports of the evidence. There were also some concerns expressed about officers not following the necessary procedures, such as their failure to collect two BAC samples after observing offenders for a 15-minute waiting period. Less frequently mentioned were problems related to insufficient grounds for the arrest, resulting in motions to suppress evidence, violations of constitutional Fourth Amendment rights, and insufficient training of law enforcement.

Judges felt that problems associated with law enforcement procedures were rare, such as taking one BAC test when they should have taken two tests or their needing to be more aware of the necessary time to wait between the PAS and ECIR (brand name of a breathalyzer machine) tests.

Prosecutors were asked whether law enforcement had sufficient training in arresting DUI offenders. About half of the responses indicated that the CHP trains their law enforcement officers well with regard to DUI arrests, especially with regard to how to conduct FSTs. The other half of the responses indicated that training was insufficient with the Sheriff's departments and some local police departments, and especially lacking was Drug Recognition Expert (DRE) training. Some of the prosecutors actually provide training to local law enforcement agencies.

Judges felt that more training would be beneficial for law enforcement in improving their procedures for giving BAC tests.

BAC Levels and Testing Related to DUI Conviction Rates

When asked about the frequency with which DUI convictions are avoided because of inadequate BAC testing, all of the judges responded that this happened rarely, infrequently, or not at all.

Assuming there is strong evidence for probable cause and conducting FSTs, judges were asked about how often DUI cases are prosecuted where the BAC level is unknown. Most of the judges responded that those who refused to take BAC tests were usually prosecuted based on other evidence of impairment. A few noted that some DDAs require that all three of the following elements be evident before they will prosecute for DUI: established BAC level, strong FST evidence, and evidence of driving impairment.

Views of Caseload

Almost all of the prosecutors interviewed felt that their DUI caseload was "high." Among the three who felt that their load was moderate, one was a supervisor, and one noted that the court calendar did not get overloaded with too many cases because the judge did not allow continuances requested by the defense. When asked if it would make a difference in their ability to prosecute cases if their caseloads were smaller, seven responded "absolutely." Several stated "not necessarily" or "not often"; these were accompanied by comments that high DUI caseloads probably made a difference, but they could still convict successfully, that high caseloads did not negatively affect them, or that losing/winning a trial did not depend on caseload size but rather on the existence of good evidence.

Relationship of High Court Caseload to Reduced Convictions

JUDGES

Judges were asked their opinion about whether high caseloads in their court lead to alcohol-reckless convictions (plea bargains) instead of DUI convictions. Six out of nine judges did not feel that high caseloads in their courts resulted in pled-down wet-reckless convictions; one judge pointed out that alcohol-related reckless convictions may occur if the burden of proof is not met and BAC levels are borderline.

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Among the three judges who felt that high caseloads led to reduced or dismissed pleas, some made suggestions for improving the situation, such as by lobbying the DDAs to stand firm, increasing funds and resources as a function of the number of cases, and developing specialty courts such as DUI, drug, and community justice courts. With slashed budgets, a few courts utilized volunteer prosecuting attorneys, which was somewhat problematic because their trials more frequently ended in not guilty or hung-jury verdicts.

PUBLIC AND PRIVATE DEFENSE ATTORNEYS

About half of the defense attorneys felt that high DUI caseloads among prosecutors did not result in increased dismissals of DUI violations. The private defense lawyers who often work in multiple counties noted that this situation varied by county. The other half of the defense attorneys felt that there was usually sufficient staff to handle the caseload or if they had high court caseload, more judges would be assigned temporarily. A few defense attorneys mentioned that cases can get settled before trial, depending on the quality of evidence and BAC level, and that a wet-reckless is counted as a prior DUI offense; rarely is there a reduction to dry-reckless, which is not counted as a prior DUI offense.

As for their own caseloads, nine out of 13 defense attorneys stated that their own caseloads were manageable, whereas the other four felt that their high caseloads affected their ability to investigate all important leads; high caseloads also minimized their ability to focus on all the motions and disrupted good communication with their clients.

Views of Prosecution Policies on Pleas, BAC Levels, and Dismissals

JUDGES

Judges were asked if they perceived changes in prosecution policy over time regarding plea-bargained convictions, as well as changes in determining the BAC levels that would lead to reduced and dismissed DUI convictions. Most of the judges felt there had been no recent changes in DA policies regarding these issues. Only two judges perceived changes, with one noting more leniency and the other acknowledging more stringency in DA policy regarding negotiated pleas. About half of the judges noted their DA has maintained stringent prosecution policy toward not reducing DUI convictions. Dismissals rarely occur and only in cases where there is insufficient evidence or dismissals are "in the interest of justice." The other half of the judges indicated that DA policy was lenient due to fewer personnel being available because of

lower funding. In one court, trials are avoided because of inadequate lab operations for BAC testing. One judge felt it was preferable to obtain a wet-reckless conviction rather than have the defendant be acquitted as it is counted as a prior DUI conviction, and such convictions still require alcohol program attendance in order to reinstate licensing privileges.

DEFENSE ATTORNEYS IN MULTIPLE COUNTIES

Although none of the public defenders interviewed had worked on DUI cases in other counties, all of the private defense attorneys handled DUI cases in multiple counties. Therefore, only the private defense attorneys were asked about county differences in prosecutorial policy relating to BAC levels, reduced convictions, and DUI dismissals.

All of the private defense lawyers stated that there were differences among counties in prosecutorial policies with regard to BAC levels for determining DUI convictions versus non-DUI reduced convictions. Some respondents noted that prosecutors in urban areas with high crime rates and caseloads, such as San Francisco, Oakland, and downtown Los Angeles, were more likely to negotiate to alcohol-reckless or even other reduced convictions (such as dry reckless and even exhibition of speed [CVC §23109]). On the other hand, some respondents noted that there could be very conservative DA policies in somewhat urban jurisdictions even with high caseloads, such as in San Jose, where more stringent policies are not likely to allow for plea bargains. Other counties noted for being very difficult to negotiate pled-down convictions are Ventura, Orange, Placer, Marin, and Shasta.

Most of the defense attorneys felt that dismissals of DUI convictions were very rare because prosecuting attorneys do not file cases if there is insufficient evidence. They mentioned that cases that go to trial might be acquitted if they were drug-involved, or if the offender refused to take a BAC test. They noted that juries are not likely to convict for DUI if there is no chemical test level on record.

Defense attorneys also reported that not only are there differences between counties in DA policy regarding DUI prosecutions, but within the larger counties, there are variations among the courts within the same county. For example, in Alameda County, the Oakland courts are highly urban and have a higher caseload of violent crimes, which are given higher priority than the DUI cases. In contrast, courts in more suburban, conservative jurisdictions like Pleasanton and Fremont, which have a lower incidence of violent crimes, devote more resources to DUI cases. A similar situation was reported in Los Angeles County, where the downtown courts have high violent

crime case volumes and therefore, were more liberal about negotiating DUI cases than were the suburban Santa Clarita courts.

Drugs and Driving

DDAs, judges, and defense attorneys (public and private) were all asked questions about drugs and driving (including prescription drugs), and issues related to drug-related DUI convictions.

Two questions asked only of the prosecutors were: 1) is there an increasing number of arrests for drugs and driving, and 2) how often are drug-related DUI cases instead convicted for a Health and Safety (H&S) §11550 violation (drug possession). Eleven out of 16 DDAs felt that arrests for drugs and driving are increasing, while three did not feel they were increasing, and two did not know. Regarding H&S §11550 convictions, half of the respondents said they did not seek §11550 convictions, while one-fourth occasionally sought §11550 convictions, and the other fourth used it as a negotiating plea.

All three groups were asked about the difficulty in obtaining convictions for drugs-only DUI, versus obtaining a conviction for a DUI involving a combination of both alcohol and drugs.

More than half of the prosecutors felt that it was not difficult to obtain a DUI conviction for a combination of drugs and alcohol because the combination resulted in greater impairment, especially if the BAC level was 0.08% and above, and the evidence of impairment from the FST was strong. The prosecutors who felt that the combination resulted in greater difficulty to convict referred to cases where there was a low BAC level or insufficient FST, and more importantly, to issues resulting from the lack of a scientifically-based per se levels of impairment for drugs.

As for DUI arrests involving drugs alone, most of the prosecutors felt it was difficult to obtain DUI convictions for the following reasons:

1. there are no scientifically established per se impairment levels for drugs (both illicit and prescription, particularly for marijuana),

2. there is an insufficient number of qualified drug recognition experts in law enforcement,

3. the general lack of scientific impairment evidence for both illicit and prescription drugs, and

4. jurors tend to be more sympathetic toward prescription drug users who take the drugs as prescribed by their doctors.

When judges were asked about drugs and driving, they stated that convictions for drug-only DUI were not difficult because of evidence of the offenders' impaired behavior at the time of their DUI arrest. However, judges would only see offenders in court after the DDAs charged them, so they would not have seen cases that lacked strong evidence.

Lastly, most of the public defenders and private defense attorneys felt it was not difficult to defend clients on drug-only DUI charges. The easier cases would involve primarily drivers using prescription drugs and marijuana, along with those cases lacking impairment evidence. Since there are no firmly established per se levels of impairment for drugs, these cases are more likely to settle, not be charged, or be dismissed. The defense attorneys who found it difficult to defend clients with drug-only DUIs referred to cases resulting from crashes, those showing clear impairment, and those that involved a combination of alcohol and drugs.

Recommendations from DDAs for improving the prosecution of drug-only DUIs included the following:

1. develop greater expert knowledge of drugs and drug-violated impairment,

2. conduct scientific studies to obtain per se levels of drug impairment, and

3. increase training in drug detection among law enforcement officers in order to obtain better evidence.

DUI Defense Strategies

For the small percentage of DUI offenders who actually go to trial, there are various strategies used by the defense attorneys which can be quite challenging to the prosecution. Both prosecutors and judges were asked questions about their views of several different defense strategies. While a variety of strategies were named, the ones that both DDAs and judges believe to be the most difficult for DDAs to counter are: 1) claiming that the offender was not the driver, and 2) claiming that the offender had a rising BAC level.

The "offender was not the driver" is most often used by the defense after a crash and in situations where there are no witnesses to verify that the offender was actually driving. Typically, the

officer arrives after the car had already crashed, and it was not always evident who actually drove the car at the time of the crash, if the passengers and driver were already out of the car.

The "rising BAC level" defense strategy is used in cases where the offenders' breath/blood tests were administered before the alcohol was mostly absorbed; the defense can argue that the defendant's blood alcohol level was lower at the time of driving and that it was still rising at the time the test was taken. After drinking alcohol the BAC level increases during a certain time period and then decreases (absorption varies between 50 minutes and 3 hours). The BAC test needs to be taken within 3 hours of arrest in order to be valid. The DDAs were roughly split on the difficulty of countering the rising BAC level defense, with slightly more indicating that it was not difficult, while two felt that it depended on the situation. Other defense strategies were mentioned but not proven to be effective for the defense.

Concerning ways to improve countering defense strategies, the prosecutors suggested that it would be a good investment for law enforcement to obtain and use more breathalyzer devices (which can be used to test alcohol levels soon after offenders are stopped), and to enlist the assistance of more experts (e.g., toxicologists, etc).

Protecting Defendant's Rights

Defense attorneys had a variety of responses when asked "to what extent do DUI laws not protect the rights of defendants?" Although one response clearly indicated that the individuals' rights were protected with entitlement to trial, about half of the responses related to complaints about the DUI sanctioning process, and the other half expressed concerns about issues related to BAC testing.

Aside from the perceived unfairness of very high fines, most of the defense attorneys' concerns about DUI sanctions related to license suspension and DMV processes, such as the short APS appeal time (30 days), no separation of powers because the hearing officer serves as both the judge and prosecutor, and the negative consequences of license suspension such as loss of work, which leads to other hardships.

The other main concerns expressed by the defense attorneys related to the presumption of guilt by the 0.08% BAC test, and the need to protect the rights of individuals who refuse chemical tests. Defense attorneys expressed concern that defendants sometimes mistakenly testify against themselves, because Miranda rights are not explained to them prior to their actual arrests.

Experiences with Media and Grass Roots Organizations

Almost all of the respondents in all of the various positions felt that media reporting on DUI issues focused mainly on DUI-related crashes involving fatalities; there is some reporting on DUI arrests and roadside DUI checkpoints. Court proceedings were not typically covered unless the stories involved celebrities or other newsworthy individuals.

When asked if they thought that the media stories influenced communities' attitudes towards deterring DUI, the majority of the interviewees felt that these stories helped communicate the consequences of DUI, helped increase awareness about the problem of DUI, and further informed the communities about sanctions and penalties of DUI. A few were not sure if there really was any influence and thought that the communities were already serious about DUI, without the influence of these stories. On the other side were a few of the defense attorneys, who felt that the media stories created unfair furor and potential jury bias.

The interviewees were asked if grass roots organizations like Mothers Against Drunk Driving (MADD) had influenced them regarding DUI cases. Several judges noted that there was little impact from MADD on their cases currently, while several felt there should not be any type of bias influencing the court. However, a few other judges and some prosecuting attorneys noted that MADD was more involved in Victim Panels, which are one of the post-conviction sanctions that some DUI offenders are required to attend. These Victim Panels support victim advocacy and in general provide DUI education. Six prosecuting attorneys noted that MADD had not at all influenced their cases, although one attorney expressed that MADD was "heavy handed" in their approach. About half of the prosecuting attorneys had been contacted by MADD occasionally, and the other half not at all; the attorneys who prosecute felony cases noted that they might have regular contact with MADD, who may monitor some of their cases and appear at the court trial.

The defense attorneys' concerns about MADD were focused mostly on the possibility that they may bias juries. During jury selection, potential jurors are screened out if they have any affiliation with MADD or similar organizations. Almost none of the defense attorneys had been contacted by MADD, though several reported that MADD representatives had appeared in court to monitor a case, but not recently.

Other DDA Opinions about Factors Associated with Varying County DUI Conviction Rates:

DUI Court - One prosecutor felt that DUI courts contribute to high conviction rates because procedures are standardized; all of the DUI cases are handled by the same prosecutor, and the defense attorneys know what to expect from the prosecutor.

Strong Investigative Work - Good investigative work in obtaining the facts of the case by well-trained law enforcement was pointed out by five of the prosecutors as an important factor for obtaining DUI convictions. One related comment stressed the importance of having a good technical crime laboratory.

Convictions at Lower BAC Levels - One prosecutor thought that cases showing impairment at a BAC level below 0.08% should result in convictions.

DDA Training - Several DDAs felt that the well-trained prosecutor was a significant factor in increasing conviction rates for DUI. Also, one DDA noted that aggressiveness in filing cases was important for high conviction rates.

Jury Pool - Several prosecutors mentioned that the quality of jury pools, in terms of potential jurors being serious-minded and having positive views of law enforcement, generally was a factor in convicting or not convicting for DUI. One person mentioned that the political leaning of a jurisdiction may be a factor in DUI conviction rates, because they may influence the quality of jury pools.

<u>Component C – Results of the Analysis of the Aggregated Variables</u>

The final method used to investigate differences in DUI conviction rates among California counties and the factors associated with these differences involved statistical modeling of average 2000-2006 DUI conviction rates for the counties. In these analyses, aggregated data of various county-related variables that include demographic and socioeconomic factors, DUI arrest and conviction process measures, and crash and recidivism variables from several sources were used in multiple regression models to determine the relationship between these variables and county DUI conviction rates in California. The goal of these analyses was to identify those county-level variables that were the most strongly associated with county DUI conviction rates,

and to describe the nature of these associations. Also presented in this section are descriptive comparisons of low and high DUI conviction rate counties on these aggregated variables.

Descriptive Comparisons of Low and High DUI Conviction Rate Counties

As noted earlier in the Methods Section (see Table 1), a number of variables by county that were thought to have potential for explaining differences in average county DUI conviction rates were obtained from DMV driver records, the California Department of Justice, the California Department of Finance, the U.S. Census Bureau, the California Office of Traffic Safety, and the California Highway Patrol Statewide Integrated Traffic Records System. These potential explanatory variables were organized according to the following categories: demographic factors, socioeconomic factors, conviction process variables, and crash/recidivism variables.

Tables 10 and 11 display comparisons of the demographic, socioeconomic, conviction process and crash/recidivism variables between the nine counties that had the lowest average DUI conviction rates (≤ 60%) and the 18 counties with the highest average DUI conviction rates (≥ 80%). For each potential explanatory variable the tables show the means and standard deviations for each group (low vs. high DUI conviction rate) and the results of a *t* test used to determine if there were significant differences between the groups. An alpha level of .05 was used to determine statistical significance of the differences, although those with an obtained significance level of less than .10 are also noted. However, due to the large number of tests conducted for the low and high conviction rate counties, it may be the case that some of the observed significant differences simply reflect statistical chance.

Table 10

Comparison of Low Versus High DUI Conviction Rate Counties on Demographic and
Socioeconomic County-Level Variables

DUI conviction rate Explanatory variable	Low (*M* = 53.1)		High (*M* = 85.7)		
	M	*SD*	*M*	*SD*	*t*
Demographic factors					
Race of DUI arrestees (%)					
White	72.44	23.40	57.79	21.70	-1.64
Hispanic	18.09	20.20	33.72	19.77	1.96*
Age of DUI arrestees (%)					
16-17	0.78	0.72	1.03	0.40	1.19
18-20	7.03	3.30	8.57	1.73	1.65
21-30	36.33	5.03	39.01	6.96	1.03
31-40	20.38	3.70	20.83	1.58	0.47
41-50	20.63	5.15	18.45	4.89	-1.09
51-60	11.09	4.13	8.81	2.50	-1.85*
61-70	2.74	0.96	2.63	1.29	-0.24
≥71	1.02	0.89	0.71	0.63	-1.08
Gender of arrestees (% female)	20.82	3.40	19.45	3.54	-0.98
Race of population (%)					
White	68.83	23.60	62.19	17.30	-0.85
Hispanic	18.11	21.95	25.08	13.76	1.04
Asian	5.03	9.87	5.77	6.29	0.24
Black	2.22	2.35	3.68	3.68	1.08
American Indian	2.94	2.03	0.95	0.78	-3.88**
Multi-racial	2.70	1.09	2.14	0.55	-1.88*
Age of population (%)					
≤15	19.77	4.71	21.86	3.62	1.31
16-17	3.04	0.66	2.94	0.37	-0.55
18-20	4.39	0.85	4.32	0.51	-0.29
21-30	12.30	3.80	13.10	3.06	0.61
31-40	13.81	4.18	14.53	1.95	0.64
41-50	15.43	1.38	15.66	1.41	0.39
51-60	12.84	2.88	12.13	2.28	-0.73
61-70	8.87	2.64	7.32	1.95	-1.77*
≥71	9.50	2.14	8.15	2.40	-1.45
Socioeconomic factors					
Presidential voting (% Bush)	52.27	16.69	50.50	13.41	-0.30
Political party (% Republican)	36.16	11.52	39.01	9.16	0.72
Violent crime rate	41.83	22.22	35.51	10.34	-1.06
Total crime rate	348.14	125.91	356.04	97.84	0.18
Population density	3.59	2.35	4.97	1.68	1.80*
Urbanicity (% urban)	49.39	39.34	77.28	24.59	2.34**
Median income level	$30,930.22	$5,146.06	$37,507.45	$5,351.61	3.10**
Percent high school graduate	77.29	8.74	81.51	6.35	1.47
OTS-funded DUI grants (AVOID)	0.22	0.44	1.55	2.33	1.68

Note. Low DUI conviction rate defined as ≤ 60%; High DUI conviction rate defined as ≥ 80%. DUI = driving under the influence of alcohol/drugs. OTS = California Office of Traffic Safety. *M* = mean, *SD* = standard deviation, *t* = t test.
*p < .10. **p < .05.

Table 11

Comparison of Low Versus High DUI Conviction Rate Counties on Conviction Process and
Crash/Recidivism County-Level Variables

DUI conviction rate	Low (M = 53.1)		High (M = 85.7)		
Explanatory variable	M	SD	M	SD	t
Conviction process variables					
BAC tests used (%)					
Blood	28.14	9.17	40.28	12.40	2.62**
Breath	62.29	7.46	52.15	12.01	-2.33**
PAS	5.12	2.73	3.33	2.20	-1.88*
Refusal	3.41	2.67	3.70	2.52	0.28
BAC level of DUI arrestees	0.149	0.005	0.151	0.004	1.28
BAC level of DUI convictees	0.168	0.007	0.162	0.004	-2.81**
BAC level of alcohol-reckless convictees	0.101	0.007	0.082	0.029	-1.98**
License status (% unknown)	11.77	4.95	16.03	7.05	1.63
FTA prevalence (%)	2.37	1.79	2.80	1.94	0.57
Dismissal prevalence (%)	0.82	0.60	0.63	0.38	-1.07
Average DUI arrest rate	1.53	0.65	0.98	0.24	-3.37**
Court lag time (median days)	85.18	42.11	69.05	20.77	-1.40
Arresting agency (% CHP)	43.88	19.83	50.65	14.60	1.03
Alcohol-related reckless convictions (%)	12.06	5.25	8.32	4.48	-1.97*
DA/Investigator staffing	2.71	0.91	3.03	1.15	0.72
Crash and recidivism variables					
1st offender DUI recidivism	5.06	1.68	4.61	1.17	-0.83
2nd offender DUI recidivism	5.09	2.39	5.88	1.42	1.12
1st offender total crash rate	4.86	1.76	4.50	0.82	-0.75
2nd offender total crash rate	3.67	2.34	2.92	1.11	-1.18
Alcohol crash fatal/injury rate	0.16	0.08	0.11	0.04	-2.51**

Note. Low DUI conviction rate defined as ≤ 60%; High DUI conviction rate defined as ≥ 80%. DUI = driving under the influence of alcohol/drugs. PAS = Preliminary alcohol screening device. BAC = Blood alcohol concentration. FTA = failure to appear (in court). DA= District attorney. CHP = California Highway Patrol. M= mean. SD = standard deviation. t = t test.
*p < .10. **p < .05.

Comparisons of Demographic Factors

Among the demographic variables, the only significant difference at a .05 alpha level indicates that there is a greater percentage of American Indians in counties with low DUI conviction rates (M = 2.9%) than there is in counties with high conviction rates (M = 0.9%). The results also suggest at the .10 alpha level that low DUI conviction rate counties have fewer Hispanic arrestees, but more arrestees ages 51-60-years-old, and a general population that is more multi-racial and includes a higher percentage of 61-70-year-olds.

Comparisons of Socioeconomic Factors

As for socioeconomic variables, two variables significantly differ between low and high DUI conviction rate counties at a .05 alpha level. Specifically, low DUI conviction rate counties are less urban ($M = 49.4\%$) and have a lower median income ($M = \$30,930$) than do high conviction rate counties ($M = 77.3\%$ and $M = \$37,507$, respectively). The results also suggest at the .10 alpha level that low conviction rate counties have a lower population density than do high conviction rate counties.

Comparisons of Conviction Process Variables

The low and high DUI conviction rate counties are significantly different at the .05 alpha level on five of the variables related to the conviction processes. These results indicate that blood tests used to determine BAC levels are used less often in low DUI conviction rate counties ($M = 28.1\%$) than those with high conviction rates ($M = 40.3\%$), and the reverse is evident for breath tests, which are used more often in low conviction rate counties ($M = 62.3\%$) than counties with high conviction rates ($M = 52.2\%$). Furthermore, the mean BAC level of DUI convictees ($M = .168\%$) and alcohol-reckless convictees ($M = .101\%$) is significantly higher in counties with low conviction rates than in those with high conviction rates ($M = .162\%$ and $M = .082\%$ respectively). Finally, the average DUI arrest rate is significantly higher in counties with low DUI conviction rates ($M = 1.5$ per 100 licensed drivers) than in counties with high DUI conviction rates ($M = 1.0$ per 100 licensed drivers). The results also suggest at the .10 alpha level that low DUI conviction rate counties use more PAS BAC tests and convict a higher percentage of DUI arrestees for alcohol-reckless driving than do high conviction rate counties.

Comparisons of Crash and Recidivism Variables

The low and high DUI conviction rate counties only differ on one of the crash or recidivism variables at the .05 alpha level. Specifically, low DUI conviction rate counties have a higher rate of alcohol-related crash fatalities and injuries ($M = 0.16$ per 100,000 population) than do high conviction rate counties ($M = 0.11$ per 100,000 population).

Summary of Descriptive Comparisons of Low and High DUI Conviction Rate Counties

In summary, the descriptive comparisons of low and high DUI conviction rate counties indicate that counties with low DUI conviction rates have higher percentages of American Indians, are

less urban and affluent, and administer fewer blood BAC tests, but more breath BAC tests. Furthermore, the low conviction rate counties have higher mean BAC levels for persons convicted of DUI and alcohol-reckless driving, and have higher overall DUI arrest rates and alcohol-related crash fatality/injury rates. The results also suggest, but at a more liberal alpha level, that low DUI conviction rate counties have lower percentages of arrestees who are Hispanic, higher percentages of arrestees who are ages 51-60-years-old, and higher percentages of the population who are multi-racial or ages 61-70-years-old. In addition, these results suggest that the low DUI conviction rate counties have lower population densities, use PAS BAC tests more often, and convict higher percentages of their DUI arrestees for alcohol-reckless driving.

Multiple Regression Analyses

Initial Selection of Explanatory Variables

To initially determine which of the potential explanatory variables shown in Table 1 have the strongest associations with county DUI conviction rates, correlations were calculated between the average county DUI conviction rates and all the potential explanatory variables, as well as among the explanatory variables themselves. The correlations of the potential explanatory variables with average county DUI conviction rates are shown in Table 12 (demographic and socioeconomic factors) and Table 13 (conviction process and crash/recidivism variables). In addition, these tables display for all of the variables, their means, standard deviations, and the minimum and maximum ranges. Additional correlations among selected explanatory variables are also shown in Table 14 and Table 15 to help illustrate why certain explanatory variables were selected for inclusion in the statistical models rather than others.

Demographic Factors

Table 12 shows that none of the demographic variables are correlated with average DUI conviction rates at a .05 alpha level. However, three of the potential demographic explanatory variables of arrestees are correlated using a liberal .25 alpha level. These correlations indicate that counties with a higher percentage of DUI arrestees in the 18-20-year-old age group tend to have higher DUI conviction rates. On the other hand, counties with higher percentages of DUI arrestees who were ages 51-60, or 71 or older, tend to have lower DUI conviction rates. In terms of county population demographics (not the demographics of arrestees), counties with higher percentages of 16-17-year-olds or 61-70-year-olds, or with higher percentages of American Indian or multi-racial ethnic groups, tend to have lower DUI conviction rates. All seven

Table 12

Descriptive Statistics of Demographic and Socioeconomic County-Level Variables Considered as Potential Explanatory Variables of County DUI Conviction Rates

Explanatory variable	Mean	Standard deviation	Range Min	Max	Correlation with DUI conviction rates
Demographic factors					
Race of DUI arrestees (%)					
White	57.31	22.96	20.50	96.30	-.11
Hispanic	32.75	21.26	2.10	76.30	.12
Age of DUI arrestees (%)					
16-17	1.05	0.57	0.00	3.00	.12
18-20	8.38	2.42	0.00	12.60	.19*
21-30	38.15	7.25	21.40	48.20	.11
31-40	21.31	3.13	14.30	36.40	.00
41-50	18.65	4.73	12.40	30.70	-.13
51-60	9.25	3.37	5.20	18.80	-.17*
61-70	2.49	1.16	1.20	5.40	-.02
≥71	0.72	0.66	0.00	2.70	-.25*
Gender of arrestees (% female)	18.94	3.99	9.90	26.30	.02
Race of population (%)					
White	62.10	18.67	18.30	90.40	-.02
Hispanic	24.71	16.24	3.70	74.90	.03
Asian	5.65	6.73	0.10	30.70	.04
Black	3.20	3.45	0.10	14.80	.09
American Indian	1.83	2.53	0.20	16.00	-.25*
Multi-racial	2.30	0.74	0.50	4.40	-.18*
Age of population (%)					
≤15	22.16	4.08	12.20	29.40	.05
16-17	3.06	0.42	1.50	3.80	-.22*
18-20	4.48	0.61	2.40	5.80	-.15
21-30	12.78	3.20	6.50	21.10	.12
31-40	13.70	2.57	9.50	23.50	.14
41-50	15.32	1.50	12.70	19.10	.13
51-60	12.24	2.49	8.50	17.10	-.05
61-70	7.72	2.25	4.80	13.70	-.21*
≥71	8.53	2.43	4.60	13.40	-.15
Socioeconomic factors					
Presidential voting (% Bush)	51.87	13.72	15.30	72.50	-.12
Political party (% Republican)	38.91	9.41	11.56	51.83	.03
Violent crime rate	43.16	18.80	12.19	103.50	-.14
Total crime rate	389.49	146.57	155.68	1011.15	-.01
Population density	4.47	1.98	0.50	9.20	.27**
Urbanicity (% urban)	69.32	29.98	0.00	100.00	.32**
Median income level	$34,506.79	$6,246.91	$23,557.00	$51,720.00	.43**
Percent high school graduate	78.74	8.02	59.00	91.20	.33**
OTS-funded DUI grants (AVOID)	1.62	4.40	0.00	30.00	.08

Note. DUI = driving under the influence of alcohol/drugs. OTS = California Office of Traffic Safety.
*p < .10. **p < .05.

demographic factors showing a correlation with DUI conviction rates at the .25 alpha level were initially selected for inclusion in the regression analyses.

Socioeconomic Factors

Four of the socioeconomic explanatory factors are correlated ($p < .05$, Table 12) with county DUI conviction rates: population density, percent urban, median income level, and percent graduated from high school. These correlations indicate that higher county DUI conviction rates are associated with higher county population densities, urbanization, median incomes, and education levels. From Table 15, it can be seen that population density and urbanicity are highly correlated with each other ($r = .79$, $p < .0001$), as are median income and percent high school graduated ($r = .69$, $p < .0001$). Checking the cross-correlations between them, median income is modestly correlated with population density ($r = .39$, $p = .003$), but is not correlated with urbanicity ($r = .19$, $p > .05$). Percent high school graduated is somewhat correlated with urbanicity ($r = -.26$, $p = .048$), but not population density ($r = .00$, $p > .05$). Due to the significant intercorrelations among these four significant variables, only median income and urbanicity were initially selected as socioeconomic factors for inclusion in the regression analyses. Furthermore, although county violent crime rate is not significantly correlated with county DUI conviction rates initially ($r = -14$, $p > .25$, Table 12), this socioeconomic variable was also selected for inclusion in the regression analysis based on a priori grounds because it was viewed as a potential surrogate measure for court caseload.

Conviction Process Variables

Table 13 shows that among the various conviction process variables, the percentages that counties used for each of the three types of BAC tests (i.e., blood, breath, and PAS) were all significantly correlated with DUI conviction rates at a .05 alpha level. These correlations indicate that counties with higher usage of blood tests tend to have higher DUI conviction rates, whereas those with higher usage of breath and PAS tests tend to have lower DUI conviction rates. Given that the percentage usage of the three types of BAC tests (along with refusals) are additive and therefore redundant, only the percentage use of blood tests was selected for inclusion in the regression analyses.

Table 13

Descriptive Statistics of Conviction Process and Crash/Recidivism County-Level Variables
Considered as Potential Explanatory Variables of County DUI Conviction Rates

Explanatory variable	Mean	Standard deviation	Range Min	Max	Correlation with DUI conviction rates
Conviction process variables					
BAC tests used (%)					
Blood	36.78	12.69	11.30	69.70	.36**
Breath	55.27	11.34	26.60	76.70	-.34**
PAS	3.67	2.13	0.00	9.10	-.27**
Refusal	3.64	2.58	0.00	12.80	.01
BAC level of DUI arrestees	0.151	0.005	0.139	.165	.16*
BAC level of DUI convictees	0.164	0.005	0.153	.175	-.34**
BAC level of alcohol-reckless convictees	0.095	0.007	0.079[a]	.112	-.32**
License status (% unknown)	14.98	6.20	3.40	34.40	.12
FTA prevalence (%)	2.99	2.15	0.00	9.70	-.03
Dismissal prevalence (%)	0.74	0.51	0.00	2.90	-.04
Average DUI arrest rate	1.23	0.59	0.30	4.20	-.38**
Court lag time (median days)	76.03	31.01	32.70	194.30	-.18*
Arresting agency (% CHP)	50.89	15.26	12.40	86.40	.02
Alcohol-related reckless (%)	10.17	4.57	0.00	22.60	-.24*
DA/Investigator staffing	2.82	1.01	0.60	6.80	.10
Crash and recidivism variables					
1st offender DUI recidivism	5.11	1.24	1.50	7.60	-.15
2nd offender DUI recidivism	5.93	1.82	0.00	9.50	.09
1st offender total crash rate	4.35	1.10	1.10	7.60	-.04
2nd offender total crash rate	2.94	1.32	0.00	7.80	-.17*
Alcohol crash fatal/injury rate	0.13	0.09	0.06	0.72	-.22*

Note. DUI = driving under the influence of alcohol/drugs. PAS = Preliminary alcohol screening device. BAC = Blood alcohol concentration.
FTA = Failure to appear (in court). CHP = California Highway Patrol. DA=District attorney.
[a]Lowest value of reported BAC levels was zero; this is the lowest non-zero value.
*$p < .25$. **$p < .05$.

Among the other conviction process variables, the average BAC levels of DUI convictees, average BAC level of alcohol-reckless convictees, and average DUI arrest rate are all correlated at a .05 alpha level with DUI conviction rates, indicating that higher BAC levels among persons convicted of DUI and of alcohol-reckless offenses, and higher average county DUI arrest rates, are all associated with lower DUI conviction rates. In addition, BAC levels of DUI arrestees, median court lag time (days to conviction), and percentage of DUI arrests convicted of alcohol-reckless offenses are all correlated with DUI conviction rates at the liberal .25 alpha level. These correlations indicate that higher DUI conviction rates tend to be associated with higher BAC levels among arrestees, shorter court lag times, and a lower percentage of alcohol-reckless convictions among DUI arrests. Along with the percentage of blood BAC tests, these six

conviction process variables found to be correlated with DUI conviction rates were initially selected for inclusion in the regression analyses.

Crash and Recidivism Variables

None of the crash and recidivism variables are correlated with DUI conviction rates at a .05 alpha level (Table 13). However, using the more liberal .25 alpha level, higher DUI conviction rates were found to be associated with lower alcohol fatal/injury crash rates and lower 2nd DUI offender total crash rates. Both of these crash variables were initially selected for inclusion in the regression analyses.

Table 14

Correlations of Selected Explanatory Variables and Average DUI Conviction Rates

Variable	1	2	3	4	5	6	7	8
1. Average DUI conviction rate	—							
2. Alcohol-related reckless (%)	-0.24 (0.0680)	—						
3. BAC level of alcohol-reckless convictees	-0.32 (0.0144)	0.53 (<.0001)	—					
4. Average DUI arrest rate	-0.38 (0.0030)	0.20 (0.1350)	0.12 (0.3533)	—				
5. Race of DUI arrestees (% Hispanic)	0.12 (0.3871)	-0.40 (0.0019)	-0.12 (0.3685)	-0.15 (0.2565)	—			
6. Race of DUI arrestees (% White)	-0.11 (0.4273)	0.34 (0.0084)	0.09 (0.5225)	0.24 (0.0676)	-0.94 (<.0001)	—		
7. BAC level of DUI convictees	-0.33 (0.0103)	0.53 (<.0001)	0.38 (0.0037)	0.09 (0.5191)	-0.50 (<.0001)	0.48 (0.0001)	—	
8. Court lag time (median days)	-0.18 (0.1702)	-0.23 (0.0814)	0.04 (0.7450)	-0.14 (0.3015)	0.22 (0.0982)	-0.25 (0.0574)	-0.23 (0.0791)	—
9. Alcohol crash fatal/injury rate	-0.22 (0.0983)	0.23 (0.0850)	0.13 (0.3360)	0.82 (<.0001)	-0.38 (0.0030)	0.41 (0.0014)	0.24 (0.0689)	-0.12 (0.3546)

Note. Values in parentheses represent *p* values for each correlation coefficient. DUI = driving under the influence of alcohol/drugs. BAC = Blood alcohol concentration.

Table 15

Correlations of Selected Explanatory Variables and Average DUI Conviction Rates

Variable	1	2	3	4	5	6	7	8
1. Average DUI conviction rate	—							
2. Median income level	0.43 (0.0009)	—						
3. Percent high school graduate	0.33 (0.0123)	0.69 (<.0001)	—					
4. Urbanicity (% urban)	0.32 (0.0148)	0.19 (0.1538)	-0.26 (0.0475)	—				
5. Population density	0.27 (0.0394)	0.39 (0.0025)	0.00 (0.9980)	0.79 (<.0001)	—			
6. BAC tests used (% blood)	0.36 (0.0058)	0.31 (0.0199)	0.22 (0.0897)	0.04 (0.7385)	0.11 (0.3954)	—		
7. BAC tests not used (% refusal)	0.01 (0.9142)	-0.09 (0.5222)	-0.16 (0.2387)	0.24 (0.0657)	0.15 (0.2562)	-0.36 (0.0050)	—	
8. Dismissal prevalence (%)	0.13 (0.3400)	0.07 (0.5821)	-0.15 (0.2522)	0.51 (<.0001)	0.53 (<.0001)	0.02 (0.8562)	0.30 (0.0205)	—
9. Alcohol crash fatal/injury rate	-0.22 (0.0983)	-0.01 (0.9442)	0.21 (0.1217)	-0.68 (<.0001)	-0.62 (<.0001)	0.19 (0.1498)	-0.28 (0.0323)	-0.32 (0.0152)

Note. Values in parentheses represent *p* values for each correlation coefficient. DUI = driving under the influence of alcohol/drugs. BAC = Blood alcohol concentration.

Reduction of Potential Explanatory Variables

Data screening, diagnostics, and plots were used to further evaluate the initial set of 19 potential explanatory variables (7 demographic, 3 socioeconomic, 7 conviction process, and 2 crash/recidivism variables) identified in the correlation analyses for inclusion in the multiple regression analysis. To reduce the pool of potential variables to a more manageable number, various combinations of the explanatory variables were analyzed together in preliminary regression models and the highly correlated variables were removed in order to eliminate redundancy or singularity. Also, the final variables that were selected are those that appeared to contribute the most to explaining the variations in the response variable, average county DUI

conviction rates. The final five explanatory variables that were selected as a result of this process for inclusion in the regression analyses are:

1. 7-year (2000-2006) average county DUI arrest rates per 100 licensed drivers,

2. 2006 county violent crime rates per 100,000 population (used as a possible surrogate for court caseload),

3. 2006 county percentages of blood tests used to detect BAC levels among DUI arrestees,

4. 2006 county mean BAC levels of convicted DUI offenders, and

5. 3-year (2004-2006) county averages of the median days from DUI arrest to conviction (court lag time).

Checking Statistical Assumptions and Transformations of Variables

Initially, multiple regression of DUI conviction rates based on the five final explanatory variables—without any transformation of the variables—was used to estimate how each explanatory variable is related to county DUI conviction rates in a strictly linear sense. These explanatory variables were examined for possible violations of the assumptions of normality, homoscedasticity, linearity, and multicollinearity. Although various tests and plots revealed some violations of normality and linearity for four of the variables, heteroscedasticity and multicollinearity were not found to be problematic.

Transformations for Normality and Linearity

For the next preliminary model, transformations of some of the variables were made to reduce skewness and kurtosis (non-normality of the variable distributions) and improve linearity prior to entering them into the regression analysis. County DUI conviction rates and violent crime rates were transformed by taking the square root of their values, while the log transformation was used for average court lag times and average DUI arrest rates as they are more severely skewed. Percentage of blood tests among arrestees and mean BAC level of DUI convictees were not transformed as their distributions are fairly normal. Plots were created and further diagnostics were conducted, which indicated that the distributions of all variables approach normality. Linearity improved for most of the variables after transformation, but some curvilinearity was still evident. Statistical significance of the individual variables was established using a .05 alpha level. Since all of the explanatory variables are significant in both analyses—based on

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transformed or untransformed variables—and also because the model parameters for transformed variables are difficult to interpret, it was decided to present the results of a model with only one of the variables transformed (log average arrest rate, because it was quite skewed) to facilitate interpretation and understanding of the final regression model results.

Removal of Outliers

As for outliers among the explanatory variables, it was decided to remove Alpine County (the California county with the smallest population size, $N = 1,256$) because this county has extreme values for several of the explanatory variables used in the analyses, and the transformations described above did not reduce the influence of this outlier on the model parameter estimates. Although there are other counties with outliers on various explanatory variables, it seemed more questionable to remove those counties because either their population sizes are not very small, and/or the values of the explanatory variables for the most part are not very extreme. Even in some cases where extreme values are present (such as having zero alcohol-reckless convictions in Marin and Ventura Counties), it was deemed important to retain these counties in the analyses because the extreme values represent true values, not errors.

Correlations of Final Explanatory Variables with County DUI Conviction Rates

Table 16 displays the correlations of the response variable, average DUI conviction rate, with the five final explanatory variables, and also presents the correlations of the five final explanatory variables with each other. Note that because these correlations do not include Alpine County, and also because average DUI arrest rate has been transformed by taking the logarithm, these correlations do not match those presented earlier.

For two of the explanatory variables, BAC levels of DUI convictees and court lag times, the correlations with average DUI conviction rates remain essentially the same after the exclusion of Alpine County. However, the correlation for (log) average DUI arrest rates changes from -.38 to -.41, reflecting effects of both the logarithmic transformation and the exclusion of Alpine County, which has an unusually high DUI arrest rate (4.2) that is an extreme outlier. The correlations with average DUI conviction rates for the violent crime rate variable ($r = -.16$ vs. $r = -.14$ prior) and the percentage of blood BAC tests among arrestees variable ($r = .38$ vs. $r = .36$ prior) becomes slightly stronger as a result of excluding Alpine County. Note that although violent crime rates and average court lag times do not correlate significantly with average DUI conviction rates in Table 16, both became significant explanatory variables in the

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subsequent regression analyses. This is because the significance levels of these predictor variables changed when they were combined with other variables in regression models, possibly due to suppressor effects.

Table 16

Correlations of Five Final Explanatory Variables and Average County DUI Conviction Rates

Variable	1	2	3	4	5
1. Average DUI conviction rate	—				
2. Average DUI arrest rate (log)	-0.41 (0.0017)	—			
3. Violent crime rate	-0.16 (0.2452)	-0.22 (0.0988)	—		
4. BAC tests used (% blood)	0.38 (0.0037)	-0.19 (0.1512)	-0.08 (0.5421)	—	
5. BAC level of DUI convictees	-0.33 (0.0110)	0.03 (0.8480)	-0.11 (0.4289)	-0.04 (0.7707)	—
6. Court lag time (median days)	-0.18 (0.1705)	-0.07 (0.6026)	0.06 (0.6665)	-0.17 (0.2028)	-0.23 (0.0852)

Note. Values in parentheses represent *p* values for each correlation coefficient. The correlations shown above do not match those presented earlier because one outlier county (Alpine County) was excluded and also because average DUI arrest rate has been log transformed to account for non-normality. DUI = driving under the influence of alcohol/drugs. BAC = Blood alcohol concentration.

Final Regression Analyses of County DUI Conviction Rates

The final five explanatory variables were used in multiple regression analyses to determine which of these explanatory variables are most strongly associated with county DUI conviction rates and to describe the nature of these associations. Two separate multiple regression analyses were conducted: simultaneous and sequential models. In the simultaneous model the explanatory variables were entered simultaneously into the regression equation and the contribution of each explanatory variable to the variance in DUI conviction rates was determined after adjusting for the contributions of all the other explanatory variables. This method provides an indication of whether each explanatory variable is uniquely associated with DUI conviction rates.

In the sequential model the explanatory variables were entered sequentially (hierarchical model) in a specified order of entry decided by the researcher, and the relationship of each explanatory variable to DUI conviction rates was determined after adjusting for only those explanatory variables considered earlier in the sequence. This method provides an indication of whether each explanatory variable contributes to DUI conviction rates based on its unique and shared contribution beyond variables already entered in the model. In ordering the variables for the sequential model, higher priority was given to the variables that are considered relatively unchangeable, whereas the variables that were entered later could be areas of potential improvement. In this case, the earlier variables were entered in order of their most significant bivariate correlation; average DUI arrest rate was entered first, followed by county violent crime rate. The three variables that were entered later were related to the conviction process measures and are areas that can potentially be improved by changes to enforcement, prosecution, and adjudication policies and procedures. These three variables were entered in order of their highest bivariate correlation with average conviction rate: percentage blood BAC tests, mean DUI conviction BAC level, and median court lag times.

Table 17 shows the results for both the simultaneous and the sequential regression analyses, including the proportion of variability in county DUI conviction rates accounted for by each explanatory variable (r_{sp}^2) under each modeling strategy. Explanatory predictor variables were entered into the sequential model in the order shown in the table.

The overall F test for the regression models is significant, indicating that the five explanatory variables in combination account for variability in county DUI conviction rates, $F(5, 51) = 9.36$, $p < .0001$, $R^2 = .48$. Specifically, about 48% of the variance in county DUI conviction rates is explained by the five combined explanatory variables. It is evident from Table 17 that regardless of whether a simultaneous or sequential strategy is used, each of the final five explanatory variables contributes significantly to the variability in county DUI conviction rates (ps < .05).

The explanatory variable that accounts for the most (17%) variability in county DUI conviction rates, regardless of the modeling strategy—and which is therefore the most important of the explanatory variables—is average county DUI arrest rate. Counties with higher DUI arrest rates tend to have lower DUI conviction rates, while counties with lower DUI arrest rates tend to have higher DUI conviction rates.

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Table 17

Summary Table of Final Simultaneous and Sequential Multiple Regression Analyses of Average County DUI Conviction Rates Using the Final Explanatory Variables

| | | | Simultaneous | | | | Sequential | | | |
Variable	b	SE	t	p	r_{sp}^2	Cum. R^2	F	p	r_{sp}^2	Cum. R^2
Intercept	229.30	40.21	5.70	<.0001	—	—	—	—	—	—
Average DUI arrest rate (log)	-13.50	3.34	-4.04	.0002	.17	.17	16.22	.0002	.17	.17
Violent crime rate	-0.18	0.07	-2.49	.0160	.06	.23	6.24	.0157	.06	.23
BAC tests used (% blood)	0.21	0.10	2.01	.0495	.04	.27	7.38	.0090	.08	.31
BAC level of DUI convictees	-8.95	2.34	-3.83	.0004	.15	.42	11.23	.0015	.11	.42
Court lag time (median days)	-0.10	0.04	-2.40	.0202	.06	.48	5.75	.0202	.06	.48

Overall Model $F(5, 51) = 9.36$, $p < .0001$, $R^2 = .479$, $R^2_{adjusted} = .427$

Note. The models above exclude Alpine County and are hence based on data for 57 counties. Average DUI arrest rate was log transformed to account for non-normality. The simultaneous estimates reflect the unique contribution of each explanatory variable. The sequential results reflect the contribution of each explanatory variable after adjusting for only variables entered at a prior step. DUI = driving under the influence of alcohol/drugs. BAC = Blood alcohol concentration. r_{sp}^2 = Squared semi-partial correlation. Cum. R^2 = cumulative proportion of explained variance.

Across both modeling strategies the next most important explanatory variable of county DUI conviction rates is mean county BAC level of convicted offenders. The mean BAC levels of offenders account for 15% of the variability in DUI conviction rates under the simultaneous model and 11% under the sequential model. Counties with higher DUI conviction rates tend to convict for DUI at lower BAC levels, compared to counties with lower DUI conviction rates, which tend to convict at higher BAC levels.

The choice of the next most important explanatory variable for county DUI conviction rates varies according to the modeling strategy. Under the sequential modeling strategy, county percentage of BAC tests based on blood is the next most important variable, accounting for 8% of the variability in county DUI conviction rates. Using the simultaneous strategy, this explanatory variable is the least significant contributor among the remaining three explanatory variables, accounting for only 4% of the variability. Regardless of the model, county percentage of BAC tests based on blood is the only variable that was found to be associated with DUI conviction rates in a positive direction, meaning that counties with higher DUI conviction rates tend to have higher percentages of blood tests used for testing the BAC level of DUI offenders. Conversely, counties with lower DUI conviction rates tend to have lower percentage usage of blood BAC tests.

Regardless of whether the simultaneous or sequential model is considered, county median court lag times from arrest to conviction and county violent crime rates are equally important contributors in explaining county DUI conviction rates, each accounting for about 6% of the variability. Specifically, the results for these explanatory variables indicate that counties with higher DUI conviction rates tend to have shorter median court lag times from violation to conviction dates and lower violent crime rates, the latter used as a possible surrogate to prosecutorial case load in the present study.

Selected Correlations of Interest Among Explanatory Variables

Some of the other correlations among the various explanatory variables are worth mentioning. With regard to conviction process variables, Table 14 shows that counties with higher percentages of alcohol-reckless convictions tend to have lower percentages of Hispanic arrests (r = -.40, p = .002), but higher percentages of White arrests (r = .34, p =.009). Also, higher percentages of alcohol-reckless convictions tend to be associated with higher BAC levels among alcohol-reckless convictees (r = .53, p < .0001), suggesting that counties with higher percentages of alcohol-reckless convictions appear to be convicting them at relatively higher BAC levels.

Also, among the conviction process variables, it is of interest to note the relationship between the percentages of BAC test refusers and the percentages of DUI dismissals among counties. Table 15 shows that counties having higher percentages of 2006 offenders who refused to take a BAC test are significantly more likely to have higher percentages of DUI dismissals (r = .30, p =.021), and that counties with lower percentages of refusers tend to have fewer dismissals. Also interesting was the finding that counties with higher percentages of BAC blood tests tend to have lower percentages of test refusals (r = -.36, p =.005).

With regard to crash and recidivism variables, additional findings in Tables 14 and 15 not directly related to DUI conviction rates but nevertheless of interest, are that the alcohol fatal-injury crash rates tend to be lower in counties with higher percentages of Hispanic DUI arrests (r = -.38, p < .05), that are more urban (r = -.68, p < .05), and that are more densely populated (r = -.62, p < .05). Conversely, alcohol fatal-injury crash rates tended to be higher in counties with higher percentages of White DUI arrests (r = .41, p < .05) and higher DUI arrest rates (r = .82, p < .05).

Although some of the variables discussed here have significant relationships with DUI conviction rates, they are either highly correlated with or became overwhelmed by the final explanatory variables, and therefore, are not included in the final regression analyses.

DISCUSSION

The following summarizes the factors consistently identified as sources of variability in county DUI conviction rates based on the results of the three data collection components used in this study and an interpretation of the collective meaning of the results. Recall that the three data collection components were: a) survey questionnaires, b) face-to-face interviews, and c) aggregated data of various county-related variables. Considerable caution should be used in generalizing conclusions from the survey and interview components because the volunteers who returned the surveys or were interviewed are not necessarily representative of all persons in the various job classifications across California. Therefore, conclusions and interpretations are limited to the respondents only, but, nevertheless, can provide insights and information relevant to the concerns and questions about why DUI conviction rates vary across all California counties. Also, in discussing relationships between the county aggregated variables, causal effects should not necessarily be inferred; nevertheless, there are some associations between the variables that can suggest possible causal relationships and thus logically lead to the conclusions and recommendations made at the end of this report.

Factors Consistently Identified as Sources of Variability in County DUI Conviction Rates

Due to the extensive amount of data collected from the three components, this summary is limited to discussing factors that were consistently identified as being potentially related to variation in county DUI conviction rates. These consistently identified factors, which are discussed in the following subsections, are:

- County DUI arrest rates
- BAC levels and testing
- Pled-down convictions
- Prosecution caseload
- Timeliness of DUI convictions
- Prosecution policies and practices
- Drugs and driving

County DUI Arrest Rates

The first factor that is strongly associated with differences in county DUI conviction rates is county DUI arrest rates. Results from the regression analysis showed that 7-year average county DUI arrest rates account for the most (17%) variability in county DUI conviction rates, in both regression models. Counties with higher DUI arrest rates tend to have lower DUI conviction rates, while counties with lower DUI arrest rates tend to have higher DUI conviction rates. A possible explanation for this relationship is that high DUI arrest rates contribute to court crowding, which results in lower conviction rates due to constraints on time and resources. It is also possible that high DUI arrest rates reflect greater aggressiveness on the part of law enforcement in arresting DUI offenders, but possibly not documenting sufficient evidence for conviction. On the other hand, it is also possible that high conviction rates in counties contribute to general deterrence of impaired driving, resulting in lower DUI incidence in those counties. This relationship was also discovered in the New Mexico study (Kunitz, Delaney, et al., 2006) with the authors' arriving at similar explanations for their results. This hypothesis that general deterrence is lower and the alcohol and driving problem higher in low conviction rate counties is supported by the simple correlations found showing that such counties have higher fatal/injury alcohol-involved crash rates and higher 2nd DUI alcohol crash rates.

BAC Levels and Testing

A second factor consistently identified as being associated with variation among counties in DUI conviction rates is BAC levels and testing. There are four specific issues that emerge with chemical testing: the adequacy of the testing process by law enforcement, the refusal of some offenders to take or complete a chemical test, the relatively low level of the obtained BAC and its relationship to conviction, and the type of chemical test given. There was some indication from the interview results that DUI convictions are sometimes compromised because the arresting peace officer either did not follow proper testing protocol, or failed to document results adequately. For example, while interviewed judges did not note this as being much of a problem, some of the prosecutors expressed concerns about law enforcement officers failing to collect two BAC samples or failing to wait an appropriate time for testing. From the survey results, the majority of prosecutors responded that they 'often' do not file DUI charges when BAC levels are below 0.08%. This suggests that DUI convictions in some jurisdictions can be improved by enhancing the training provided to local law enforcement agencies in DUI detection, testing, and documentation procedures.

The second issue with chemical tests concerns offenders who refuse to take or complete a test. Most district attorneys that were interviewed stated that if a missing BAC value is due to the offender refusing the test, they almost always file charges. Most of the judges interviewed felt that DUI offenders who refuse to take the BAC test (about 4.9% statewide; Oulad Daoud & Tashima, 2009) are usually prosecuted based on other evidence of impairment, if there is strong evidence for probable cause. This is partly supported by the fact that 68% of 2006 DUI offenders who refused to take the BAC test were eventually convicted (based on APS records). Thus, while most test refusers are still prosecuted and convicted, the lack of a BAC test can be an issue in their adjudication, something pointed out by defense attorneys, who mentioned that DUI cases that go to trial (about 5% according to the survey results) might be acquitted if the offenders refused to take the BAC tests. They claimed that juries are not likely to convict for DUI if there is no BAC level available. Based on these interview responses, it appears critical that law enforcement be especially diligent in documenting the probable cause for arrest, following the testing procedures and outcomes, and recording the behavioral indicators of impairment, for offenders who refuse to take a chemical test.

There exists some county-level data that supports the interview results suggesting that while most test refusers are prosecuted and convicted, the lack of BAC test results from this refusal sometimes creates problems in adjudicating the cases. Among the aggregated county variables, for example, counties with higher percentages of BAC test refusers have higher percentages of dismissals (Table 15). While the total number of dismissals reported from courts to DMV is not large—for 2006 was 1,297 (Oulad Daoud & Tashima, 2009), which is less than 1% of DUI arrests (0.83%)—there is significant variation by county, ranging from 0% (Alpine, Plumas, and Sierra Counties) to 4.3% (San Francisco County).

A third issue specific to chemical tests concerns the relationship between the obtained BAC level and the conviction of the DUI offender. The results of the survey (see Table 5) show that all four respondent groups consider low BAC levels to 'often' support alcohol-reckless convictions. The actual mean BAC level of 2006 DUI arrestees who were convicted of alcohol reckless is 0.095%. This is significantly lower than the average BAC level of DUI arrestees convicted of DUI, which for 2006 offenders is 0.16%. The lowest mean county BAC level for persons convicted of alcohol reckless (other than Marin and Ventura Counties, which had no alcohol-reckless convictions among 2006 arrestees) is 0.078% (Lassen County, see Appendix C), while the highest is 0.111% (Sierra, San Francisco, and Plumas Counties). Thus, low BAC levels appear more difficult to prosecute and more likely to result in reductions to alcohol-reckless convictions, and counties vary significantly regarding the BAC levels at which this occurs.

There is additional evidence that counties vary significantly regarding the BAC levels at which DUI versus reduced charges, such as alcohol reckless driving, occur. One of the variables associated with variation in county DUI conviction rates in the regression analyses is the mean county BAC level of those who are convicted of DUI. Counties with higher DUI conviction rates tend to convict for DUI at lower BAC levels, compared to counties with lower conviction rates, which are more likely to convict at higher BAC levels. This finding could reflect tougher prosecutorial policy among the higher conviction rate counties, resulting in DUI prosecution at lower BAC levels. In the final sequential regression analysis, county mean BAC levels among convictees contributes 11.5% to explaining the variance in county conviction rates.

The fourth issue with chemical tests concerns the type of test given, and an important finding of this study is that counties that conduct a higher proportion of chemical tests using blood have significantly higher DUI conviction rates, and conversely, lower percentage use of blood tests is related to lower DUI conviction rates. This relationship is supported in the final regression analyses and explains 8% of the variation in county DUI conviction rates. As stated earlier, blood tests give very definitive BAC levels, because they are more reliable and accurate than breath tests, which make them less likely to be challenged by defense attorneys. Blood tests are also useful in determining if drugs are present, but at the current time in California, there are no per se levels of impairment established for any drugs.

While the use of blood tests appears to be associated with higher DUI conviction rates, there are several issues that should be considered in their use. For example, the handling of blood samples (chain of evidence) can be challenged in court. The defense can have the blood retested if there are concerns about the testing; they can stipulate to a BAC level or negotiate a plea bargain. A second issue is whether blood tests are forced by law enforcement or if the drivers gave the samples without coercion. The U.S. Supreme Court (Schmerber v. California, 1966) decided that it is permissible for law enforcement to take a sample of a person's blood without a warrant to determine intoxication, provided that certain guidelines are followed in order for a person's Fourth Amendment rights to not be violated: the blood sample must be taken in a medically approved manner, after a lawful arrest, and with a reasonable belief that intoxication is present.

Finally, it should be pointed out that because of California case-law decisions affecting admissibility of blood evidence, challenging the admissibility of blood evidence in a DMV APS hearing can result in DMV having to vacate some blood-test dependent APS cases. It is important that individuals who analyze blood samples meet required job class and training requirements. It is also important that BAC results are submitted to DMV within 15 days of the

testing date in order not to jeopardize APS license actions. Delays in labs analyzing and reporting blood BAC levels for APS suspension cases has been such a large problem for DMV that an effort by one of the actions (1.15) set in motion by Strategic Highway Safety Plan (SHSP) Challenge Area #1 is to establish a means for labs to send blood results electronically to DMV. While DOJ already electronically reports BAC levels to DMV, the 27 private labs in California do not send blood test results to DMV electronically. If the BAC test results are not received within the hearing time period requirement of 30 days, then the APS suspension must be stayed, which could jeopardize DMV's ability to uphold the action. Nonetheless, while there are important requirements that blood testing must meet, it should be emphasized that higher use of blood tests is associated with higher DUI conviction rates.

Pled-Down Convictions

Survey respondents also reported how often they think various conditions, in addition to low BAC levels discussed earlier, support alcohol-reckless convictions (Table 5). Facts of cases are considered 'often' by prosecutors and defense attorneys and 'sometimes' by judges to support alcohol-reckless pleas. Problems with chemical tests are 'sometimes' considered to be supportive of alcohol reckless by judges and defense attorneys, while prosecutors consider this to 'seldom' be a factor. Negotiations are considered 'sometimes' by both judges and prosecutors to lead to alcohol-reckless convictions. However, offenders not having previous traffic or criminal records is 'never' considered to be a reason supporting alcohol-reckless pleas by the majority of prosecutors, judges, and public defenders. In addition, all four groups 'never' consider the offender being a young adult as a factor supporting alcohol-reckless convictions.

Regarding non-alcohol-reckless convictions, the survey results (Table 6) show that, in addition to low BAC levels, defense attorneys 'always' think the facts of cases and negotiations with prosecution support these reduced convictions. The majority of prosecutors think the facts of cases 'often' and chemical test problems 'seldom' support non-alcohol-reckless pleas, while the rest of the conditions listed on the survey are 'never' supportive. The judges indicated that the various conditions listed in the survey 'seldom' or 'never' support non-alcohol-reckless convictions. Regardless of whether it is relatively low BAC levels, the facts of the case, or other issues, it is clear that there is significant variation in the proportion of offenders arrested for DUI who are ultimately convicted of alcohol- or non-alcohol-reckless driving among California counties.

The 7-year (2000-2006) overall statewide average percentage of DUI arrestees who were convicted of alcohol-reckless driving was 8.1%, with the county percentages ranging from 22.6% to 0% alcohol-reckless convictions (see Appendix C). The percentages of non-alcoho-l reckless convictions or "other" convictions were not averaged over 7 years; however, the 2006 overall non-alcohol reckless statewide average percentage was estimated at 1.8% and that for "other" convictions was 2.1% (Oulad Daoud & Tashima, 2009).

Prosecution Caseload

High prosecution caseload was also consistently identified as a factor associated with variability in county DUI conviction rates. Almost all of the interviewed prosecuting attorneys reported that they had 'high' caseloads, and nine out of 13 stated that high caseloads occur constantly. Among the few who reported moderate caseloads, one noted that the judge does not allow continuances requested by the defense, which keeps the court calendar from getting overloaded. About seven of the prosecutors responded 'absolutely' when they were asked if it would make a difference in their ability to prosecute cases if their caseloads were smaller. Others stated 'not necessarily' or 'not often' as they think they can still convict successfully because it does not depend on caseload size, but rather on having solid evidence.

In response to the question asked of judges whether high caseloads in their courts lead to increased alcohol-reckless convictions, two-thirds of the judges do not feel that this occurs. One judge pointed out that alcohol-reckless convictions tend to occur if the burden of proof is not met and BAC levels are borderline. The few judges who believe that high caseloads lead to reduced or dismissed pleas suggest that funds and resources need to be increased and that developing specialty courts, such as DUI, drug, and community justice courts, would help to improve the situation.

For the aggregated data regression analyses, county violent crime rates were used as a possible surrogate measure of court crowding and prosecution caseload. Higher county violent crime rates were found to be significantly associated with lower DUI conviction rates, possibly because prosecutors necessarily give higher priority to prosecuting violent crimes over DUI, as well as the greater likelihood that they have a higher caseload. For example, the average 7-year DUI conviction rates for San Francisco and Alameda Counties are lower than the statewide average (58.2% and 67.6%, respectively), and their violent crime rates are much higher than those of most counties (see Appendix C). On the other hand, San Joaquin County has a higher violent crime rate than San Francisco or Alameda Counties, but has a higher average DUI conviction

rate (74.6%), suggesting that there are undoubtedly other factors operating that contribute to the variation in county DUI conviction rates besides case overload.

Timeliness of DUI Convictions

The timeliness of DUI convictions was also a factor consistently found to contribute to variability in county DUI conviction rates. As pointed out earlier, one of the prosecuting attorneys noted that their caseload is not overloaded because the judge does not readily allow continuances requested by the defense attorneys. One possible byproduct of disallowing continuances is that when cases are not delayed, they may be less likely to go to trial, be acquitted, or be dismissed because witnesses do not appear at trial or because of their loss of memory for details. This information was suggested by various interviewees in response to the questions about difficulty in obtaining witnesses. Also, results from the regression analyses show that counties with shorter median court lag times from DUI arrest to DUI conviction tend to have higher DUI conviction rates. This finding replicates a result from a study involving DUI convictions in New Mexico counties (Kunitz, Delaney, et al., 2006), in which longer delays between arrest and conviction were found to be associated with lower probability of conviction.

Prosecution Policies and Practices

Prosecution policies and practices are the factors most strongly identified by the five groups (judges, prosecutors, public defenders, private defense attorneys, and court administrators) to the open-ended survey question about why county DUI conviction rates vary. They perceive that county DUI conviction rates vary because of county differences regarding various prosecutorial practices and policies relating to filing, charging, and plea bargaining, as well as issues related to case overload and training/experience of prosecutors. In the interviews with judges, about half noted that prosecutor policies may be lenient due to fewer personnel being available as a result of reduced funding levels to pay staff.

Some of the private defense attorneys noted that prosecutors in urban areas with high crime rates and high caseloads, such as San Francisco, Oakland, and downtown Los Angeles, are more likely to negotiate to alcohol reckless or other reduced convictions (e.g. non-alcohol reckless or exhibition of speed). However, they also point out that some urban jurisdictions with high caseloads, such as San Jose, have stringent prosecution policies that are not likely to allow for reduced convictions in DUI cases.

Private defense attorneys also report that not only are there county differences in prosecutorial policies regarding DUI convictions, but that in large counties, there are also variations among courts within the same county. For example, Alameda County has courts that are located in diverse areas, both urban and suburban; the crime rate is higher in Oakland than in the outlying suburban, more conservative areas such as Pleasanton and Fremont. A similar situation was reported for Los Angeles County, where the downtown courts deal with higher violent crime volumes, and have been more liberal about negotiating DUI cases than the suburban Santa Clarita courts.

Regarding training and experience among prosecutors, two-thirds of the judges interviewed felt that they need more experience and training, especially the volunteer attorneys. Some of the concerns that judges have about the prosecutors are that they are generally younger than private defense attorneys, they have high turnover because of limited 3-year contracts, and they are in departments that lack adequate funding for staffing. Although several judges believe that the private defense attorneys tend to have more experience and be more specialized in DUI cases than the public defenders, they also believe that public defenders have about the same level of experience as the prosecuting attorneys.

Drugs and Driving

The final concern consistently mentioned that makes it difficult to convict for DUI is drugs and driving. Prosecuting attorneys were initially asked about whether they experience increasing numbers of arrests for drugs and driving, and how often these cases are instead convicted for a H&S §11550 violation (drug possession). A majority stated that there have been increases in arrests for drugs and driving; half said they do not seek H&S §11550 convictions in lieu of DUI convictions, while one-fourth occasionally do, and the other one-fourth use it as a negotiating plea.

Regarding the difficulty in obtaining convictions for drugs-only DUI versus obtaining a conviction for a combined alcohol and drugs DUI, more than half of the prosecuting attorneys stated it is not difficult to obtain a DUI conviction for combined drugs and alcohol if there is solid FST evidence and the BAC level is 0.08% or above.

As for drugs alone and driving, most of the prosecuting attorneys stated that it is difficult to convict for drug-only DUI primarily because there are no scientifically-based per se impairment levels established for non-prescription and prescription drugs in California. Other reasons they

mentioned for the difficulty in obtaining drug-only DUI convictions were that there is an insufficient number of qualified drug recognition experts in law enforcement, and that jurors tend to be sympathetic toward prescription drug users.

In support of the opinion of prosecuting attorneys, both public and private defense attorneys expressed that it is not difficult to defend drug-only DUI cases. They reported that easier cases tend to involve primarily drivers who use prescription drugs or marijuana, as well as those that lack solid evidence of impairment. The defense attorneys indicated that drug-only arrests are more likely to be settled, dismissed, or not charged, possibly because there are no established per se levels of impairment for drugs. They also reported that the drug DUI cases that are difficult to defend are those involving crashes, those with solid evidence of impairment, and those including a combination of alcohol and drugs.

The concerns expressed above for issues related to drugs and driving are supported by various publications reporting on the complexities surrounding the detection of drugs and driving. DMV's 2011 DUI-MIS report (Oulad Daoud & Tashima, 2011) shows that among California alcohol-drug fatalities, 21.4% involved drugs only and an additional 23.0% involved both drugs and alcohol, for a total of 44.4% that were drug-involved. Over the last decade in California, drug-involved fatalities increased by 146%. At the national level, the 2007 U.S. national roadside survey of drivers sponsored by NHTSA (Lacey et al., 2009) found evidence of drug use among 11.0% of daytime drivers and 14.4% of nighttime drivers. Marijuana was the most frequent individual drug found, other than alcohol. Their drug prevalence estimates do not necessarily indicate impairment at the time of driving, merely that the drugs or metabolites were present in the saliva.

Per se laws for alcohol have been readily enforced because of the development of hand-held breathalyzer devices, but there are no such devices for detecting drugs. The greater complexity of the effects of drugs and difficulty in determining impairment levels because of wide variation of effects at different doses make per se laws for drugs more difficult to establish and enforce than those for alcohol. Also, the difficulty in prosecuting drivers for drugs and driving comes from the fact that there are no scientifically-based concentration levels for the various drugs that definitively indicate impairment (Compton et al., 2009; Transport Research Centre OECD/ITF, 2010).

Currently there are 15 states in the U.S. that have zero-tolerance drug per se laws, which make it illegal for all drivers to drive with any amount of specified drugs in their system. Two additional

states make it illegal for drivers under age 21 to drive with any amount of the prohibited drugs (Compton et al., 2009; Lacey et al., 2010). Lacey et al. (2010) interviewed law enforcement officers and found that they generally did not perceive that the zero tolerance drug per se laws made enforcement easier. However, interviewed prosecutors felt that these laws were beneficial for convicting drug DUI cases, because evidence from the blood tests often deterred cases from going to trial. However, in states without drug per se laws, they also found that most of the drug DUI defendants pled guilty if the assistance of law enforcement drug recognition experts was obtained during the arrests.

Comparison with Prior Research

Although prior research in New Mexico (Kunitz, Delaney, et al., 2006) considered contextual variables and specifically identified political culture as an important source of variability in DUI conviction rates, it was not found to be a factor associated with variability in county DUI conviction rates in the present study. However, DUI arrest rates, court crowding (violent crime rate as surrogate measure), and length of time between arrest and conviction were found to be important factors in prior studies as well as in the current study. The differences in findings between studies may be due to the fact that different jurisdictions were studied, which had mixed contextual variables, or that the present study utilized factors that are more closely associated with actual DUI practices and prosecution procedures rather than relying solely on contextual/cultural variables.

RECOMMENDATIONS

Based on the combined results from the three components of this study, the following are recommendations for actions or acknowledgements/support for efforts already underway to reduce variation in county DUI conviction rates in California.

1. Reduce the number of delays and continuances granted by the judiciary in DUI cases. This action may reduce the caseload for prosecutors and may also result in more DUI convictions due to improved witness availability and accuracy of testimony for trials. This can also increase the swiftness of adjudication and punishment for the DUI offender, and thus enhance the general deterrence of impaired driving. One avenue to achieve this is to distribute information on lag times of California courts to courts that are identified as having long lag times.

2. Encourage law enforcement through training and outreach efforts to use blood tests for obtaining BAC levels. Results from blood tests are more definitive and less likely to be challenged by the defense, so increased use may result in more DUI convictions. These blood tests should be obtained with the consent of the driver and in accordance with established guidelines where the blood sample is taken in a medically approved manner, after a lawful arrest, and with a reasonable belief that intoxication is present. To avoid difficulties in sustaining APS suspensions when the results for blood tests are challenged in APS hearings, the blood tests should be obtained and tested in accordance with the established guidelines and reported expeditiously to DMV. The benefit of blood testing could be included in the various training programs for law enforcement.

3. Encourage the prosecution of DUI at BAC levels of 0.08% and above, and discourage reduced alcohol-reckless convictions at BAC levels near the illegal limit. This would reduce the considerable variation among counties regarding the BAC levels at which alcohol-reckless cases are being convicted, which should result in more DUI convictions.

4. Support legislation, such as the proposal developed by SHSP Challenge Area #1 (Reduce Impaired Driving Fatalities) to differentiate in the vehicle code DUI offenses involving drugs from those for alcohol. Because both alcohol and drug DUI arrests and convictions are currently charged under the same CVC sections, it is not possible to distinguish between alcohol and drug offenses, which make it difficult to determine the extent of drug-related driving, the effectiveness of drug-related countermeasures, and the impact of

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efforts by law enforcement and prosecution to cite and convict these offenders. Currently, only two U.S. states (Hawaii and New York) have separate statutes for alcohol DUI and drug DUI violations. This proposal has precedence in the California laws prior to 1982, when misdemeanor and felony drug DUI were charged separately from those for alcohol DUI (CVC §23105 drug misdemeanor; CVC §23106 drug felony).

5. Support legislation, such as that proposed by SHSP Challenge Area #1, to establish zero tolerance for any amount of drugs in the driver's system (for drugs listed in H&S §11550). Currently 15 states in the U.S. have zero-tolerance per se laws for drugs, and two more states make it illegal for drivers under 21 years old to have any amount of specified drugs in their systems when driving.

6. Train more law enforcement officers in the Advanced Roadside Impaired Driving Enforcement (ARIDE) program offered by CHP (16 hours of training), and in the Advanced Drug Recognition Experts training program (108 hours + plus biannual recertification). This will require continued dedicated funding from the Office of Traffic safety or other sources.

7. Encourage prosecuting attorneys and law enforcement to attend training programs provided by the Traffic Safety Resource Program; the TSRP has been awarded continuing grant funds from OTS to provide mentoring and specialized training to both prosecutors and law enforcement in prosecuting DUI, evaluating vehicular felony and misdemeanor cases, and collision reconstruction. Special focus should be given to provide this training to counties with lower than average DUI conviction rates.

8. Initiate new efforts and strengthen existing ones, to change the traffic safety culture in California, especially regarding the use of alcohol/drugs and driving. Changing the public's attitudes, beliefs, and norms about impaired driving can increase general deterrence, help shift support for additional resources and training, and increase commitment to detecting, prosecuting, and sentencing impaired drivers.

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APPENDICES

Appendix A

Survey Letters and Instruments

A-1

Judges

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382 MS: H-126
SACRAMENTO, CA 94232-3820

May 29, 2009

Honorable

The Research and Development Branch of the Department of Motor Vehicles recently received federal funding for a study to explore and evaluate possible factors contributing to varying conviction rates among California counties. Data produced from the DMV DUI Management Information System (http://www.dmv.ca.gov/about/profile/rd/DUI_2009_MIS_AR.pdf) show that while California's overall DUI conviction rate (based on arrested drivers) has increased over time from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

One part of the study is to conduct a survey of those directly involved in prosecuting, defending, and adjudicating DUI offenders. We are seeking your assistance in identifying possible factors that may contribute to low/high DUI conviction rates. We wish to send the survey (copy enclosed) to judges who are directly involved in DUI cases. It would be most helpful if you would send me the names and contact information for these judges, or if you prefer to distribute the surveys or provide the online link to these judges directly, would you let me know how many surveys were distributed or links provided? You can mail the contact information to the address below, email it to <htashima@dmv.ca.gov>, or fax it to (916) 657-8589. If you have any questions, my phone number is (916) 657-7033. If you provide us the contact information for the judges, we will be able to send them the link directly to the online version of the survey or we can provide a hard copy of the survey which they can mail or fax back to us. Their experiences and views are very important in helping us assess these factors.

All responses will be held in strict confidence, including confidentiality of identity. Findings reported from this survey will be aggregated and not linked to individual respondents; all response information will be deleted after a sufficient time to allow for data collection.

Thank you in advance for your attention and assistance.

Helen Tashima, *Research Program Specialist*
DMV Research & Development Branch, LOD
2570 24th St. MS H-126
Sacramento, CA 95818-2606

Enclosure

Judges DUI Conviction Rate survey

1. Judge's Survey

* 1. Name the county for which you are providing information.

County

County [▼]

* 2. Name the city of the court for which you are providing information.

[   ]

3. About how many DUI cases have you seen in the past 6 months?

○ 1-20

○ 21-40

○ 41-60

○ 61-80

○ 81-100

○ 101+

4. How often are the following conditions acceptable to you for a defendant's plea of guilty to a charge of Section 23103.5 (alcohol reckless) as a substitute for an original charge of Section 23152?

(Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Low BAC level	○	○	○	○	○
High fines	○	○	○	○	○
First DUI arrest	○	○	○	○	○
Young adult	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Lack of impairment evidence from field sobriety test	○	○	○	○	○
High fines	○	○	○	○	○
Negotiations with defense attorney	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

[   ]

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Judges DUI Conviction Rate survey

5. How often are the following conditions acceptable to you for a defendant's plea of guilty to a charge of Section 23103 (non-alcohol reckless) as a substitute for an original charge of Section 23152?
(Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Low BAC level	○	○	○	○	○
First DUI arrest	○	○	○	○	○
Young adult	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Lack of impairment evidence from field sobriety test	○	○	○	○	○
High fines	○	○	○	○	○
Negotiations with defense attorney	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

[   ]

6. At what chemical test BAC level would you accept a defendant's guilty plea to Section 23103.5 (alcohol reckless) as a subtitute for an original charge of Section 23152?

☐ No level available

☐ 0.05%

☐ 0.06%

☐ 0.07%

☐ 0.08%

☐ 0.09%

☐ 0.10%

☐ 0.11%

☐ 0.12%

☐ 0.13%

☐ 0.14%

☐ 0.15%

☐ BAC test refusal

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Judges DUI Conviction Rate survey

7. At what chemical test BAC level would you accept a defendant's guilty plea to Section 23103 (non-alcohol reckless) as a subtitute for an original charge of Section 23152?

☐ No level available

☐ 0.05%

☐ 0.06%

☐ 0.07%

☐ 0.08%

☐ 0.09%

☐ 0.10%

☐ 0.11%

☐ 0.12%

☐ 0.13%

☐ 0.14%

☐ 0.15%
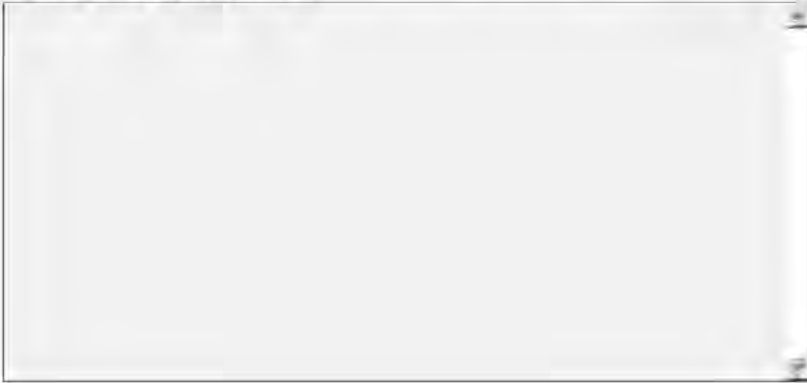
☐ BAC test refusal

8. How often are the following conditions acceptable to you for dismissing all charges against a defendant arrested for Section 23152? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Chemical test (BAC level) below 0.08%	○	○	○	○	○
Chemical test unavailable (not refusal)	○	○	○	○	○
Chemical test refusal	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Insufficient evidence of alcohol/drug impairment from field sobriety test	○	○	○	○	○
Drug impairment results unavailable	○	○	○	○	○
Insufficient probable cause to stop or arrest	○	○	○	○	○
Police officer unable to testify	○	○	○	○	○
Unavailable witnesses/expert witnesses	○	○	○	○	○
Negotiations with defense attorney	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

Judges DUI Conviction Rate survey

9. What do you think are possible factors that influence variation in DUI conviction rates among counties?

A-2

District or Prosecuting Attorney

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382   MS: H-126
SACRAMENTO, CA 94232-3820

June 15, 2009

Dear District or Prosecuting Attorney,

The Research and Development Branch of the Department of Motor Vehicles recently received federal funding for a study to explore and evaluate possible factors contributing to varying DUI conviction rates among California counties. Data produced from the DMV DUI Management Information System (http://www.dmv.ca.gov/about/profile/rd/DUI_2009_MIS_AR.pdf) show that while California's overall DUI conviction rate (based on arrested drivers) has increased over time from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

One part of the study is to conduct a survey of those directly involved in prosecuting, defending, and adjudicating DUI offenders. We are seeking your assistance in identifying possible factors that may contribute to low/high DUI conviction rates. We wish to have the district or prosecuting attorneys in your office who are directly involved in DUI cases to respond to the survey (copy enclosed). You may mail the information in the envelope enclosed or fax it to (916) 657-8589. If you prefer the online version, you may email me at <htashima@dmv.ca.gov>, and I will send you the link to it. If you have any questions, my phone number is (916) 657-7033. Your opinions are very important in helping us assess these factors.

All responses will be held in strict confidence, including confidentiality of identity. Findings reported from this survey will be aggregated and not linked to individual respondents; all response information will be deleted after a sufficient time to allow for data collection.

Thank you in advance for your attention and assistance.

Helen Tashima, *Research Program Specialist*
DMV Research & Development Branch, LOD
2570 24th St. MS H-126
Sacramento, CA 95818-2606

Enclosure

District Attorneys' DUI Conviction Rate survey

1. Survey for District Attorneys

* 1. Name the county for which you are providing information.

County

County [▾]

* 2. Name the city of the court for which you are providing information.

[   ]

3. About how many DUI cases have you prosecuted in the past 6 months?

- ○ 1-20
- ○ 21-40
- ○ 41-60
- ○ 61-80
- ○ 81-100
- ○ 101+

4. Please indicate the percentage of ALL your DUI (Sections 23152 or 23153) cases that were represented by the following?

	1-20%	21-40%	41-60%	61-80%	81-100%
1) public defender	☐	☐	☐	☐	☐
2) private defense attorney	☐	☐	☐	☐	☐
3) not represented	☐	☐	☐	☐	☐

5. Please indicate the percentage of your DUI (Sections 23152 or 23153) cases where the defendants pled guilty at

	1-10%	11-20%	21-30%	31-40%	41-50%	51-60%	61-70%	71-80%	81-90%	91-100%
1) arraignment	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
2) pre-trial conference	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
3) trial assignment	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
4) jury or bench trial	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

6. Regarding your DUI cases that went to trial, what proportion were represented by the following?

	1-20%	21-40%	41-60%	61-80%	81-100%
1) public defender	☐	☐	☐	☐	☐
2) private defense attorney	☐	☐	☐	☐	☐
3) not represented	☐	☐	☐	☐	☐

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District Attorneys' DUI Conviction Rate survey

7. For FIRST DUI offenders, indicate whether you believe the current DUI laws for adult offenders mandate appropriate sanctions or should be changed in the following areas:

	Less stringent	Remain the same	More stringent
BAC level at 0.08%	◯	◯	◯
Jail Time	◯	◯	◯
Length of DUI Programs	◯	◯	◯
License Suspension/Restriction	◯	◯	◯
Discretionary Ignition Interlock	◯	◯	◯
Probation Requirements	◯	◯	◯
Home arrest, SCRAM, Work Furlough, Community service (alternatives to jail)	◯	◯	◯
Fines, penalty assessments, restitution	◯	◯	◯

8. For REPEAT DUI offenders, indicate whether you believe the current DUI laws for adult offenders mandate appropriate sanctions or should be changed in the following areas:

	Less stringent	Remain the same	More stringent
BAC level at 0.08%	◯	◯	◯
Jail Time	◯	◯	◯
Length of DUI Programs	◯	◯	◯
License Suspension/Restriction	◯	◯	◯
Discretionary Ignition Interlock	◯	◯	◯
Probation Requirements	◯	◯	◯
Home arrest, SCRAM, Work Furlough, Community service (alternatives to jail)	◯	◯	◯
Fines, penalty assessments, restitution	◯	◯	◯

District Attorneys' DUI Conviction Rate survey

9. For those cases in which you conditionally agreed to a guilty plea to a charge of Section 23103.5 (alcohol reckless) as a substitute for an original charge of Section 23152, how often are the following conditions the basis for this action? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Low BAC level	○	○	○	○	○
First DUI arrest	○	○	○	○	○
Young adult	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Insufficient evidence of impairment from field sobriety test	○	○	○	○	○
Negotiations with defense attorney	○	○	○	○	○
Judge's recommendation	○	○	○	○	○
High fines	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

10. For those cases in which you conditionally agreed to a guilty plea to a charge of Section 23103 (NON-alcohol reckless) to substitute for an original charge of Section 23152, how often are the following conditions the basis for this action? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Low BAC level	○	○	○	○	○
First DUI arrest	○	○	○	○	○
Young adult	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Insufficent evidence of impairment from field sobriety test	○	○	○	○	○
High fines	○	○	○	○	○
Negotiations with defense attorney	○	○	○	○	○
Judge's recommendation	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

District Attorneys' DUI Conviction Rate survey

11. At what chemical test BAC level would you offer a charge of Section 23103.5 (alcohol reckless) to a defendant as a subtitute for an original charge of Section 23152?

☐ No level available

☐ 0.05%

☐ 0.06%

☐ 0.07%

☐ 0.08%

☐ 0.09%

☐ 0.10%

☐ 0.11%

☐ 0.12%

☐ 0.13%

☐ 0.14%

☐ 0.15%

☐ BAC test refusal

12. At what chemical test BAC level would you offer a charge of Section 23103 (NON-alcohol reckless) to a defendant as a subtitute for an original charge of Section 23152?

☐ No level available

☐ 0.05%

☐ 0.06%

☐ 0.07%

☐ 0.08%

☐ 0.09%

☐ 0.10%

☐ 0.11%

☐ 0.12%

☐ 0.13%

☐ 0.14%

☐ 0.15%

☐ BAC test refusal

District Attorneys' DUI Conviction Rate survey

13. For those cases in which you did not file a DUI complaint against a defendant arrested for Section 23152, how often are the following conditions the basis for not filing? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Chemical test (BAC level) below 0.08%	O	O	O	O	O
Chemical test unavailable (not refusal)	O	O	O	O	O
Chemical test refusal	O	O	O	O	O
Factual circumstances of case	O	O	O	O	O
No traffic/criminal history	O	O	O	O	O
Evidentiary problems with chemical test	O	O	O	O	O
Insufficient evidence of alcohol/drug impairment from field sobriety test	O	O	O	O	O
Drug impairment results unavailable	O	O	O	O	O
Insufficient probable cause to stop or arrest	O	O	O	O	O
Police officer unable to testify	O	O	O	O	O
Unavailable witnesses/expert witnesses	O	O	O	O	O
Negotiations with defense attorney	O	O	O	O	O
Court overload of cases	O	O	O	O	O
Jail time served, jail overcrowding	O	O	O	O	O

Other (Please specify)

[text box]

14. For the past year, please indicate the percentage of your DUI cases that were granted a motion to suppress hearing?

- O 0-2%
- O 3-5%
- O 6-8%
- O 9-11%
- O 12-14%

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District Attorneys' DUI Conviction Rate survey

15. After you have filed a DUI complaint, how often are the following conditions the basis for dismissing all charges for a defendant arrested for Section 23152? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Chemical test (BAC level) below 0.08%	○	○	○	○	○
Chemical test unavailable (not refusal)	○	○	○	○	○
Chemical test refusal	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Insufficient evidence of alcohol/drug impairment from field sobriety test	○	○	○	○	○
Drug impairment results unavailable	○	○	○	○	○
Insufficient probable cause to stop or arrest	○	○	○	○	○
Police officer unable to testify	○	○	○	○	○
Unavailable witnesses/expert witnesses	○	○	○	○	○
Negotiations with defense attorney	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

16. What do you think are possible factors that influence variation in DUI conviction rates among counties?

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Public Defenders and Private Defense Attorneys

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382   MS: F-126
SACRAMENTO, CA 94232-3820

May 22, 2009

Dear Public Defender,

The Research and Development Branch of the Department of Motor Vehicles recently received federal funding for a study to explore and evaluate possible factors contributing to varying DUI conviction rates among California counties. Data produced from the DMV DUI Management Information System (http://www.dmv.ca.gov/about/profile/rd/DUI_2009_MIS_AR.pdf) show that while California's overall DUI conviction rate (based on arrested drivers) has increased over time from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

One part of the study is to conduct a survey of those directly involved in prosecuting, defending and adjudicating DUI offenders. We are seeking your assistance in identifying possible factors that may contribute to low/high DUI conviction rates. We wish to send the survey (copy enclosed) to the public defenders in your office who are directly involved in DUI cases. Would you be willing to send me the names and contact information for these attorneys? You can mail the contact information to the address below, email it to <htashima@dmv.ca.gov>, or fax it to (916) 657-8589. If you have any questions, my phone number is (916) 657-7033. If you provide contact information for the attorneys, we will be able to send them the link to an online version of the survey or we can provide a hard copy of the survey which they can mail or fax back to us. Their opinions are very important in helping us assess these factors.

All responses will be held in strict confidence, including confidentiality of identity. Findings reported from this survey will be aggregated and not linked to individual respondents; all response information will be deleted after a sufficient time to allow for data collection.

Thank you in advance for your attention and assistance.

Helen Tashima, *Research Program Specialist*
DMV Research & Development Branch, LOD
2570 24th St. MS H-126
Sacramento, CA 95818-2606

Enclosure

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382 MS: F-126
SACRAMENTO, CA 94232-3820

June 10, 2009

Dear Defense Attorney,

The Research and Development Branch of the Department of Motor Vehicles recently received federal funding for a study to explore and evaluate possible factors contributing to varying DUI conviction rates among California counties. Data produced from the DMV DUI Management Information System http://www.dmv.ca.gov/about/profile/rd/DUI_2009_MIS_AR.pdf show that while California's overall DUI conviction rate (based on arrested drivers) has increased over time from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

One part of the study is to conduct a survey of those directly involved in prosecuting, defending and adjudicating DUI offenders. We are seeking your assistance in identifying possible factors that may contribute to low/high DUI conviction rates. We are asking that this survey be completed by those of you who have been directly involved with DUI cases and are most able to answer these questions. Your opinions are important in helping us assess these factors.

All responses will be held in strict confidence, including confidentiality of identity. Findings reported from this survey will be aggregated and not linked to individual respondents; all response information will be deleted after a sufficient time to allow for data collection.

Thank you in advance for your attention and assistance.

Helen Tashima, *Research Program Specialist*
DMV Research & Development Branch, LOD
2570 24th St. MS H-126
Sacramento, CA 95818-2606

Defense Attorneys' DUI Conviction Rate survey

1. Survey for Defense Attorneys

* 1. Name the counties for which you are providing information.

County

County [▼]

* 2. Name the cities of the courts for which you are providing information.

[   ]

3. About how many DUI cases have you defended in the past 6 months?

◯ 1-20

◯ 21-40

◯ 41-60

◯ 61-80

◯ 81-100

◯ 101+

4. Please indicate the percentage of your DUI cases (Sections 23152 or 23153) that ended at each of the following stages:

	1-10%	11-20%	21-30%	31-40%	41-50%	51-60%	61-70%	71-80%	81-90%	91-100%
1) arraignment	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
2) pre-trial conference	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
3) trial assignment	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
4) jury or bench trial	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

5. For FIRST offenders, indicate whether you believe the current DUI laws for adult offenders mandate appropriate sanctions or should be changed in the following areas:

	Less stringent	Remain the same	More stringent
BAC level at 0.08%	◯	◯	◯
Jail Time	◯	◯	◯
Length of DUI Programs	◯	◯	◯
License Suspension/Restriction	◯	◯	◯
Discretionary Ignition Interlock	◯	◯	◯
Probation Requirements	◯	◯	◯
Home arrest, SCRAM, Work Furlough, Community service (alternatives to jail)	◯	◯	◯
Fines, penalty assessments, restitution	◯	◯	◯

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Defense Attorneys' DUI Conviction Rate survey

6. For REPEAT offenders, indicate whether you believe the current DUI laws for adult offenders mandate appropriate sanctions or should be changed in the following areas:

	Less stringent	Remain the same	More stringent
BAC level at 0.08%	○	○	○
Jail Time	○	○	○
Length of DUI Programs	○	○	○
License Suspension/Restriction	○	○	○
Discretionary Ignition Interlock	○	○	○
Probation Requirements	○	○	○
Home arrest, SCRAM, Work Furlough, Community service (alternatives to jail)	○	○	○
Fines, penalty assessments, restitution	○	○	○

7. For those cases in which you support a client's guilty plea to a charge of Section 23103.5 (alcohol reckless) as a substitute for an original charge of Section 23152, how often are the following conditions the basis for this action? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Low BAC level	○	○	○	○	○
First DUI arrest	○	○	○	○	○
Young adult	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Lack of impairment evidence from field sobriety test	○	○	○	○	○
High fines	○	○	○	○	○
Negotiations with District Attorney	○	○	○	○	○
Judge's recommendation	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

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Defense Attorneys' DUI Conviction Rate survey

8. For those cases in which you support a client's guilty plea to a charge of Section 23103 (NON-alcohol reckless) as a substitute for an original charge of Section 23152, how often are the following conditions the basis for this action? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Low BAC level	○	○	○	○	○
First DUI arrest	○	○	○	○	○
Young adult	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
High fines	○	○	○	○	○
Lack of impairment evidence from field sobriety test	○	○	○	○	○
Negotiations with District Attorney	○	○	○	○	○
Judge's recommendation	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

[   ]

9. At what chemical test BAC level would you support a charge of Section 23103.5 (alcohol reckless) as a subtitute for an original charge of Section 23152?

☐ No level available

☐ 0.05%

☐ 0.06%

☐ 0.07%

☐ 0.08%

☐ 0.09%

☐ 0.10%

☐ 0.11%

☐ 0.12%

☐ 0.13%

☐ 0.14%

☐ 0.15%

☐ BAC test refusal

Defense Attorneys' DUI Conviction Rate survey

10. At what chemical test BAC level would you support a charge of Section 23103 (non-alcohol reckless) as a subtitute for an original charge of Section 23152?

☐ No level available

☐ 0.05%

☐ 0.06%

☐ 0.07%

☐ 0.08%

☐ 0.09%

☐ 0.10%

☐ 0.11%

☐ 0.12%

☐ 0.13%

☐ 0.14%

☐ 0.15%

☐ BAC test refusal

11. For those cases in which you recommend that all charges against a defendant arrested for Section 23152 be dismissed, how often are the following conditions the basis for this action? (Respond to all that apply)

	Never	Seldom	Sometimes	Often	Always
Chemical test (BAC level) below 0.08%	○	○	○	○	○
Chemical test unavailable (not refusal)	○	○	○	○	○
Chemical test refusal	○	○	○	○	○
Factual circumstances of case	○	○	○	○	○
No traffic/criminal history	○	○	○	○	○
Evidentiary problems with chemical test	○	○	○	○	○
Insufficient evidence of alcohol/drug impairment from field sobriety test	○	○	○	○	○
Drug impairment results unavailable	○	○	○	○	○
Insufficient probable cause to stop or arrest	○	○	○	○	○
Police officer unable to testify	○	○	○	○	○
Unavailable witnesses/expert witnesses	○	○	○	○	○
Negotiations with District Attorney	○	○	○	○	○
Court overload of cases	○	○	○	○	○
Jail time served, jail overcrowding	○	○	○	○	○

Other (Please specify)

Defense Attorneys' DUI Conviction Rate survey
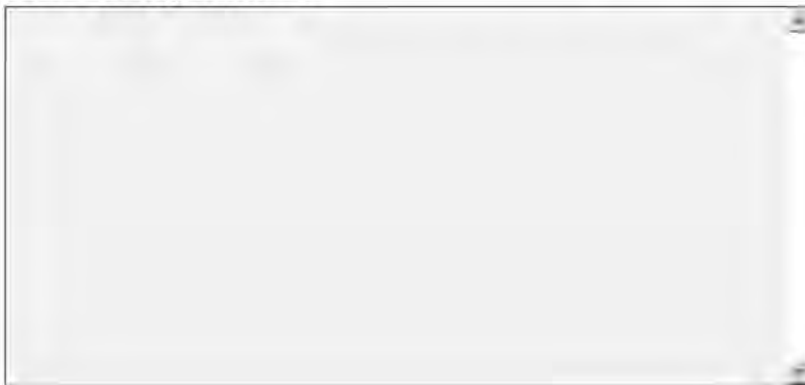
12. For the past year, please indicate the percentage of your DUI cases that were granted a motion to suppress hearing?

- ○ 0-2%
- ○ 3-5%
- ○ 6-8%
- ○ 9-11%
- ○ 12-14%

13. For the past year, for DUI cases that you sought dismissal, what percentage were actually dismissed of all DUI charges?

- ○ 0-10%
- ○ 11-20%
- ○ 21-30%
- ○ 31-40%
- ○ 41-50%
- ○ 51-60%
- ○ 61-70%
- ○ 71-80%
- ○ 81-90%
- ○ 91-100%

14. What do you think are possible factors that influence variation in DUI conviction rates among counties?

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Executive Officer or Court Administrator

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382 MS: F-126
SACRAMENTO, CA 94232-3820

June 5, 2009

Dear Court Executive Officer or Court Administrator,

The Research and Development Branch of the Department of Motor Vehicles recently received federal funding for a study to explore and evaluate possible factors contributing to varying DUI conviction rates among California counties. Data produced from the DMV DUI Management Information System (http://www.dmv.ca.gov/about/profile/rd/DUI_2009_MIS_AR.pdf) show that while California's overall DUI conviction rate (based on arrested drivers) has increased over time from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

One part of the study is to conduct a survey of those directly involved in prosecuting, defending and adjudicating DUI offenders. In addition, we are seeking your assistance in identifying possible factors that may contribute to low/high DUI conviction rates. We are asking that this survey be forwarded to member(s) of your administrative staff who have been directly involved with DUI cases and are most able to answer these questions. Your opinions are important in helping us assess these factors.

All responses will be held in strict confidence, including confidentiality of identity. Findings reported from this survey will be aggregated and not linked to individuals respondents; all response information will be deleted after a sufficient time to allow for data collection.

Return Information:

We would appreciate your taking about 8 to 10 minutes to complete this survey which contains 10 questions. You may send the attached survey to the address below or you may fax it to (916) 657-8589. If you prefer to use the online version of this survey, let me know via my email address <htashima@dmv.ca.gov> and I will send you the link to access the online survey. Contact person: Helen Tashima, (916) 657-7033.

Thank you in advance for your attention and consideration of this request.

Helen Tashima, *Research Program Specialist*
DMV Research & Development Branch, LOD
2570 24th St. MS H-126
Sacramento, CA 95818-2606

Enclosure

Court Administrators DUI Conviction Rate survey

1. Court Administrator's Survey

* 1. Name the county for which you are providing information.

County

County [_____] [▼]

* 2. Name the city of the court for which you are providing information.

[_____]

3. Check the range of the total of fines, penalty assessments and fees that your court requires for a MISDEMEANOR FIRST DUI conviction.

◯ $ 390 - $1000

◯ $1001 - $1500

◯ $1501 - $2000

◯ $2001 - $2500

◯ $2501 - $3000

◯ $3001 - $3500

◯ $3501 - $4000

◯ $4001 - $4500

◯ $4501 - $5000

◯ $5001+

4. Check the range of the total of fines, penalty assessments and fees that your court requires for a MISDEMEANOR SECOND DUI conviction.

◯ $ 390 - $1000

◯ $1001 - $1500

◯ $1501 - $2000

◯ $2001 - $2500

◯ $2501 - $3000

◯ $3001 - $3500

◯ $3501 - $4000

◯ $4001 - $4500

◯ $4501 - $5000

◯ $5001+

Court Administrators DUI Conviction Rate survey

5. Check the range of the total of fines, penalty assessments and fees that your court requires for a MISDEMEANOR THIRD or more DUI conviction.

◯ $ 390 - $1000

◯ $1001 - $1500

◯ $1501 - $2000

◯ $2001 - $2500

◯ $2501 - $3000

◯ $3001 - $3500

◯ $3501 - $4000

◯ $4001 - $4500

◯ $4501 - $5000

◯ $5001 - $5500

◯ $5501 - $6000

◯ $6001+

6. How frequently does your court notify DMV of DUI offenders who "failed to appear" (FTA) in court for their arraignment or conviction?

◯ Never   ◯ Seldom   ◯ Sometimes   ◯ Often   ◯ Always   ◯ Unknown

7. If your court transmits information to DMV about DUI offenders who "failed to appear" (FTA) in court for their arraignment or conviction, how is the information transmitted?

◯ Electronically   ◯ Hard copy   ◯ Both

8. How frequently does your court notify DMV of DUI cases that were dismissed?
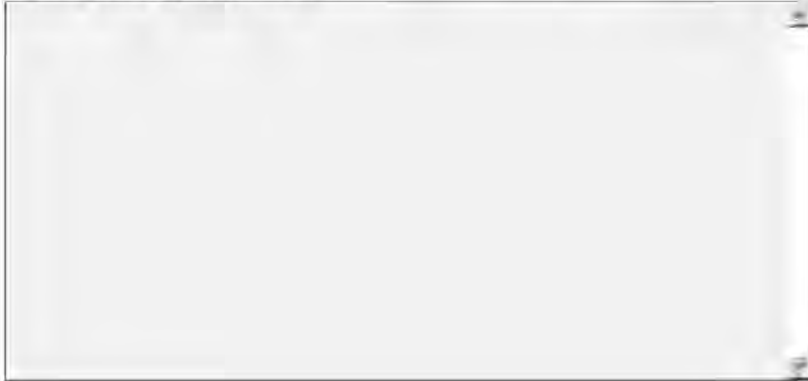
◯ Never   ◯ Seldom   ◯ Sometimes   ◯ Often   ◯ Always   ◯ Unknown

9. If your court transmits information to DMV about DUI offenders whose case was dismissed, how is the information transmitted?

◯ Electronically   ◯ Hard copy   ◯ Both

Court Administrators DUI Conviction Rate survey

10. What do you think are possible factors that influence variation in DUI conviction rates among counties?

Appendix B

Interview Contact Letters, Questionnaires, and Consent Form

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382 MS: F-126
SACRAMENTO, CA 94232-3820

February 26, 2010

Dear Judge or Commissioner,

You may already be aware that the Research and Development Branch of the Department of Motor Vehicles received federal funding for a study to explore and consider possible factors contributing to varying DUI conviction rates among California counties. To review, data produced from the DMV DUI Management Information System show that while California's overall DUI conviction rate (based on arrested drivers) has increased from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

A few months ago, we sent a survey to those directly involved in prosecuting, defending and adjudicating DUI offenders. As a follow up to these surveys, we now wish to explore possible factors that may influence DUI conviction rates in greater depth through face-to-face interviews. Interviews will be conducted with a sample of deputy district attorneys, judges or commissioners, and defense attorneys to obtain a more complete picture of the adjudication process. We are seeking your participation as your experience and knowledge are important in helping us to assess these factors. The interviews will take about 45 minutes to one hour, and most of the questions are "open-ended".

These interviews will be tape-recorded for subsequent analysis and summarizing. All responses will be held in strict confidence, including confidentiality of personal identity. Findings reported from these interviews will be aggregated and not linked to individual respondents.

We realize that as a judge or commissioner, your time is limited. However, we are very interested in hearing about your experience and knowledge in order to better understand the issues involved in DUI conviction rates. We have requested the consultation services of the Institute of Social Research, at CA State University Sacramento, which will follow up in requesting and scheduling volunteers and conducting interviews. You will hear from one of their staff within the next several weeks.

Thank you in advance for your attention and assistance.

Helen Tashima, *Research Program Specialist*
DMV Research & Development Branch, LOD
2570 24th St. MS H-126
Sacramento, CA 95818-2606
(916) 657-7033
Email address htashima@dmv.ca.gov

JUDGES/COMMISSIONERS:

Introduction: (Note: Interviewer briefly introduces himself/herself, explains the purpose of the interview and provides the informed consent.)

As we indicated in the Informed Consent we would like to audio record this interview for purposes of accuracy, so I would like to first do a sound check of the recorder to make sure we are getting both your and my voices clearly.

[Sound check]

I will begin recording now. [State date, your name, participant number, job position of interviewee, location of interview, and "interviews for DUI Conviction Rate project."]

Let's start by talking a little bit about you and your experiences in DUI cases.

1. How long (months or years) have you adjudicated DUI cases in this county? Overall (in your career as a judge/commissioner)?

2. About how many DUI cases are you involved in per month?

Next, I am interested in your experience of how the media and your community feel about DUI issues.

3. Have you noticed how often your local news has stories on DUI?

   a. Do you think these stories influence how people in your community feel about DUI? How?
   b. In what ways do various grass roots organizations such as MADD, influence the DUI conviction rates in your court?
   c. What other community groups other than MADD have tried to influence the conviction of DUI cases in your court?

I'd like to explore other areas that may contribute to varying DUI conviction rates –

4. In your court, how often have DUI convictions appeared to have been prevented because of inadequate testing for BAC levels?
   a. Assuming that other evidence is reasonably strong, such as probable cause and field sobriety tests, are many DUI cases prosecuted where the BAC level is unknown?
   b. Are there other problems with law enforcement arrest procedures that lead to plea bargains or dismissals of DUI cases? (If yes) What do you think can be done to rectify them?

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c. If there are problems with arrest procedures, what do you think can be done to rectify them?

5. DUI defense strategies may shift over time. Do you see defense attorneys using the same strategies or are they presenting new arguments in recent years?

a. (If yes) Can you talk a little bit about the new strategies you've observed in the courtroom?
b. Do these strategies appear to affect the ability of the Deputy DAs to get a DUI conviction?
c. I'm going to review a list of common strategies. Can you tell me which of the following strategies appear to be the most difficult to counter?

    i. The DUI offender was not the driver of the vehicle
    ii. Breath-Blood Partition Ratio
    iii. Rising level of BAC
    iv. Challenges to blood and breath test devices and procedures
    v. Others (Please explain)

6. How likely is it that defendants charged for driving while impaired by drugs alone or drugs with alcohol (BAC under .08%) will be convicted of this offense?

a. What do you see as the main problems in prosecuting driving impairment with drugs alone (without alcohol)? With drugs and alcohol (BAC below .08%)?
b. Do you see any possibilities for improving the prosecution of these cases?
c. How likely is it that drivers using prescription drugs will be convicted?

7. In the time that you have served as a judge or commissioner for DUI cases, have you noticed in your court if DA policy toward DUIs has changed? (If so) To what extent (minimal, moderate, great) has it changed regarding the following:

a. Pleas to alcohol-related reckless convictions
b. The BAC level at which pleas to lesser charges are considered.
c. Dismissal of DUI cases

8. In your court, in general, do defense attorneys (public or private) appear to have greater experience and training in DUI cases than do prosecuting attorneys (Please explain)?

a. Do prosecutors appear to need more experience in working with DUI cases?
b. Do you think prosecutors need more mentoring? If so, in whic**h** areas?

Next, I'd like to ask you some questions that have to do with how much work is demanded of our criminal justice system, specifically, the number of cases on court calendars.

9. Do you feel that a high calendar caseload may be leading to alcohol-reckless pleas instead of convictions for DUI in your court?

a. If this is an issue in your court, do you have any ideas on what can be done about it?

I don't have any more questions for you, but I'd be interested to know if you have anything to add or if you would like to revisit any of the topics we discussed earlier.

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382   MS: F-126
SACRAMENTO, CA 94232-3820

February 26, 2010

Dear Deputy District Attorney,

You may already be aware that the Research and Development Branch of the Department of Motor Vehicles received federal funding for a study to explore and consider possible factors contributing to varying DUI conviction rates among California counties. To review, data produced from the DMV DUI Management Information System show that while California's overall DUI conviction rate (based on arrested drivers) has increased from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

A few months ago, we sent a survey to those directly involved in prosecuting, defending and adjudicating DUI offenders. As a follow up to these surveys, we now wish to explore possible factors that may influence DUI conviction rates in greater depth through face-to-face interviews. Interviews will be conducted with a sample of deputy district attorneys, judges or commissioners, and defense attorneys to obtain a more complete picture of the adjudication process. We are seeking your participation as your experience and knowledge are important in helping us to assess these factors. The interviews will take about 45 minutes to one hour, and most of the questions are "open-ended".

These interviews will be tape-recorded for subsequent analysis and summarizing. All responses will be held in strict confidence, including confidentiality of personal identity. Findings reported from these interviews will be aggregated and not linked to individual respondents.

We realize that as a prosecuting attorney, your time is limited. However, we are very interested in hearing about your experience and knowledge in order to better understand the issues involved in DUI conviction rates. We have requested the consultation services of the Institute of Social Research, at CA State University Sacramento, which will follow up in requesting and scheduling volunteers and conducting interviews. You will hear from one of their staff within the next several weeks.

Thank you in advance for your attention and assistance.

Helen Tashima, *Research Program Specialist*
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DEPUTY DISTRICT ATTORNEYS:

Introduction:

I will begin recording now. State date, your name, participant number, job position of interviewee, location of interview, and "this interview is for the DUI Conviction Rate project."

First of all, District Attorney's Offices divide the workload among prosecuting Deputy DAs in different ways, depending on the office. In the area of DUI, different offices may sometimes concentrate the work among a core group, or they may spread the work out among a wider staff. Thus, Deputy DAs may have different levels of experience in the prosecution of DUI cases. I'd like to know more about your experience, and so I'll start with some basic questions about your workload and experience:

1. What percentage of your current time is involved in DUI cases?

2. About how many DUI cases come across your desk per month?

3. How long (months or years) have you been a prosecutor in DUI cases in this office? Overall?

   a. Potential follow-up – Have you ever worked as a DUI defense attorney?

Next, I will go through a series of questions involving workload training and more about experience. First, I'd like to ask about how workload is handled and distributed in your office:

4. What proportion of DUI cases in your office are assigned to NEW prosecuting attorneys?

   a. Do NEW prosecutors assigned to DUI cases receive any training - formal or informal?
   b. (If yes) How was that training administered? (in-house by other staff here, or previous staff, or by some other entity)?
      i. (If yes) Has training been administered in this way in this office since you've been here?
      ii. (If not) Has it changed over time in content, format of delivery, etc?

5. When you first began prosecuting DUI cases yourself, did you receive specific training in this area (other than what you learned in law school)?

   a. (If yes) How was that training administered? (in-house by other staff here, or previous staff, or by some other entity, mentoring)?
      i. (If yes) What was the most useful part of that training?
      ii. (If yes) Are there other things that you would have wanted to be included in that training?

7. Broadly speaking, how necessary do you believe training to be for the successful prosecution and conviction of DUI offenders? As you have gained experience in prosecuting DUI cases, do you feel that experience itself has been relevant to your effectiveness in convicting DUI? How?

Next, I'd like to ask you some questions about possible reasons why we see variation across counties in DUI conviction rates. One possibility has to do with how much work is demanded of our criminal justice system, specifically, the caseload of offices such as yours.

8. How crowded or overloaded do you perceive your own personal caseload of DUI cases to be?

   a. What about your office as a whole for DUI cases?
   b. Would it make a difference to your ability to successfully prosecute DUI cases if your caseload was smaller?

9. DUI defense strategies may often shift over time. Have defense attorneys used the same strategies or have they been presenting new arguments in recent years? Do these strategies affect your ability to prosecute a DUI conviction? Which of the following strategies were the most difficult to counter, and if so, do you have any ideas about what to do the next time you encounter them?

   a. The DUI offender was not the driver of the vehicle
   b. Breath-Blood Partition Ratio*
   c. Rising level of BAC**
   d. Challenges to blood and breath test devices and procedures
   e. Others.

10. We understand that in some situations, witnesses, such as police officers, are needed for the prosecutor to obtain a DUI conviction. How difficult has it been for you to obtain witnesses, such as police officers, for your DUI court proceedings?

   a. Have you lost cases because witnesses failed to appear? Do you consider this to be a significant problem?
   b. What are some of the circumstances that have contributed to witnesses not appearing when you've tried to convict DUI cases?
   c. Among your cases, have defense attorneys tried to delay the DUI adjudication process, resulting in the lack of witnesses appearing?
   b. Do you have any thoughts about what could be done to increase the likelihood of witnesses appearing for a DUI court proceeding?

11. In addition to alcohol involvement, have you had experiences prosecuting cases involving drug impairment?

    a. Has it been more difficult to obtain convictions for drugs alone versus drugs with alcohol?

    b. For cases involving only drugs, how often do you get a conviction on a Health & Safety drug charge as opposed to a DUI charge?

    c. Do you see any possibilities for improving the prosecution of these cases?

    d. How difficult is it to prosecute drivers using prescription drugs?

12.   In your experience, has it been difficult to obtain a DUI conviction for a DUI arrestee involved in a crash who had sustained injuries that prevented his appearance in court for an extended period of time?

    a. If yes, did it make a difference if the individual is at fault or not at fault?

13.   There are various actions taken by peace officers when arresting a driver for DUI that could influence DUI convictions. Have you experienced problems in prosecuting DUI cases due to actions by law enforcement?

    a. What actions taken by peace officers when arresting someone for DUI create the most problems for you when trying to prosecute the case, e.g. insufficient or inaccurate data, errors in field sobriety tests (FST), insufficient grounds to stop the vehicle?

    b. Why do you think this happens?

    c. Do you think insufficient training of peace officers is a problem?

We are interested in your experience of how the media and your community feel about DUI issues.

16.   How often does your local news media have stories on DUI?

    a. Do you think these stories influence how people in your community feel about DUI? In what ways?

    b. How often do you get interviewed by the media?

    c. In what ways do various grass roots organizations, like MADD, affect your strategies in prosecuting DUI arrestees?

        i. How often have such organizations contacted you personally?

        ii. Have they appeared in court when you were prosecuting a DUI arrestee?

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382   MS: F-126
SACRAMENTO, CA 94232-3820

February 26, 2010

Dear Public Defender,

You may already be aware that the Research and Development Branch of the Department of Motor Vehicles received federal funding for a study to explore and consider possible factors contributing to varying DUI conviction rates among California counties. To review, data produced from the DMV DUI Management Information System show that while California's overall DUI conviction rate (based on arrested drivers) has increased from 64% in 1989 to 79% in 2006, there exists considerable variation in this rate among counties.

A few months ago, we sent a survey to those directly involved in prosecuting, defending and adjudicating DUI offenders. As a follow up to these surveys, we now wish to explore possible factors that may influence DUI conviction rates in greater depth through face-to-face interviews. Interviews will be conducted with a sample of deputy district attorneys, judges or commissioners, and defense attorneys to obtain a more complete picture of the adjudication process. We are seeking your participation as your experience and knowledge are important in helping us to assess these factors. This is an opportunity for you to voice your concerns and to provide a balanced view toward the goal of obtaining valid outcomes in the adjudication process. The interviews will take about 45 minutes to one hour, and most of the questions are "open-ended".

These interviews will be tape-recorded for subsequent analysis and summarizing. All responses will be held in strict confidence, including confidentiality of personal identity. Findings reported from these interviews will be aggregated and not linked to individual respondents.

We realize that as a public defender, your time is very limited. However, we are very interested in hearing about your experience and knowledge in order to better understand the issues involved in DUI conviction rates. We have requested the consultation services of the Institute of Social Research, at CA State University Sacramento, which will follow up in requesting and scheduling volunteers and conducting interviews. You will hear from one of their staff within the next several weeks.

Thank you in advance for your attention and assistance.

Helen Tashima, *Research Program Specialist*
DMV Research & Development Branch, LOD
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Sacramento, CA 95818-2606
(916) 657-7033
Email address <htashima@dmv.ca.gov>

PUBLIC DEFENDERS:

Introduction: :(Note: Interviewer briefly introduces himself/herself, explains the purpose of the interview and provides the informed consent.)

As we indicated in the Informed Consent we would like to audio record this interview for purposes of accuracy, so I would like to first do a sound check of the recorder to make sure we are getting both your and my voices clearly.

[Sound check]

I will begin recording now. [State date, your name, participant number, job position of interviewee, location of interview, and "This interview is for the DUI Conviction Rate project"].

As you are aware, Public Defender's Offices may divide the workload among their attorneys in different ways, depending on the office. In the area of DUI, different offices may sometimes concentrate the work among a core group, or they may spread the work out among a wider staff. As we are talking with Public Defenders operating in these different environments, we are very interested in the varying experiences that Public Defenders have had. In that regard, we'd like to know more about your experience, and so I'll start with some basic questions about your workload and experience.

1. How long (months or years) have you been a public defender for DUI cases?
   a. Any experience as a private defense attorney working with DUI cases?   How long?

2. What percentage of your current cases are DUI?
   a. About how many DUI cases are you involved in per month?

3. Have you worked as a public defender in other counties, defending people charged with DUI?
   a. (If yes), which counties? How long did you work in each county?
   b. If you have served as a public defender for DUI cases in more than one county, have you noticed differences among the counties in DA policy? To what extent (minimal, moderate, great) have you noticed differences regarding the following:

      i. Pleas to alcohol-related reckless
      ii. The BAC levels at which pleas to lesser charges are considered
      iii. Dismissal of cases

It is our understanding that Public Defender's Offices divide the workload among their public defenders in different ways, depending on the office. I'd like to talk a little bit about how workload is distributed in your office and any training that might be offered:

4. Approximately what proportion of DUI cases handled by your office are assigned to NEW (in office one year or less) public defenders?

5. Do new public defenders assigned to DUI cases receive formal or informal training?
    a. (If yes) How was that training administered? (in-house by other staff here, or previous staff or by some other entity)?
    b. (If yes) Has training been administered in this way in this office since you've been here?
    c. (If not) Was training given in the past? What type? Why did it stop?

6. How much training as a public defender for DUI cases were you able to obtain on-the-job?

    a. What type of training?
    b. As you have gained experience in defending DUI cases, do you feel that experience itself is relevant in your effectiveness in defending DUI cases?

7. In addition to alcohol-involved cases, have you defended cases involving drugs and driving impairment?

    a. Compared to alcohol-only DUI cases, are cases involving only drugs and driving or those involving drugs AND alcohol (BAC under 0.08%) and driving more difficult to defend, and why or why not?
    b. How difficult is it to defend drivers charged with driving while impaired by prescription drugs?

8. To what extent do DUI laws not protect the rights of defendants?

    a. In what way?

Now I'd like to ask about your experience of how the media and your community feel about DUI issues.

9. How often does your local news have stories on DUI?

    a. Do you think these stories influence how people in your community feel about DUI? In what way?
    b. How often are you interviewed by the media?
    c. In what ways (if at all) do various grass roots organizations, like MADD, affect your strategies in defending DUI arrestees?
    d. How often have such organizations contacted you personally or appeared in court when you were defending a DUI arrestee?

Finally, I'd like to ask you a question that has to do with how much work is demanded of our criminal justice system, specifically, the number of cases on court calendars.

9. To what extent (minimal, moderate, great) does a high caseload for the prosecution appear to lead to plea bargaining or a dismissal instead of a DUI conviction?

10. During times when you have a high caseload, how does that affect your ability to fully defend DUI cases?

I don't have any more questions for you, but I'd be interested to know if you have anything to add or if you'd like to revisit any of the topics we discussed earlier.

DEPARTMENT OF MOTOR VEHICLES
RESEARCH AND DEVELOPMENT BRANCH
P.O. BOX 932382 MS: F-126
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February 26, 2010

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We realize that as a defense attorney, your time is limited. However, we are very interested in hearing about your experience and knowledge in order to better understand the issues involved in DUI conviction rates. We have requested the consultation services of the Institute of Social Research, at CA State University Sacramento, which will follow up in requesting and scheduling volunteers and conducting interviews. You will hear from one of their staff within the next several weeks.

Thank you in advance for your attention and assistance.

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(916) 657-7033
 email address<htashima@dmv.ca.gov>

PRIVATE DEFENSE ATTORNEYS:

Introduction: (Note: Interviewer briefly introduces himself/herself, explains the purpose of the interview and provides the informed consent.)

As we indicated in the Informed Consent we would like to audio record this interview for purposes of accuracy, so I would like to first do a sound check of the recorder to make sure we are getting both your and my voices clearly.

[Sound check]

I will begin recording now. [State date, your name, participant number, job position of interviewee, location of interview, and "This interview is for the DUI Conviction Rate project"].

As you are aware, Defense Attorney's Offices may divide the workload among their attorneys in different ways, depending on the office. In the area of DUI, different offices may sometimes concentrate the work among a core group, or they may spread the work out among a wider staff. As we are talking with Defense Attorneys operating in these different environments, we are very interested in the varying experiences that Defense Attorneys have had.   In that regard, we'd like to know more about your experience, and so I'll start with some basic questions about your workload and experience.

1. How long (months or years) have you been a private defense attorney for DUI cases in this office? Overall? Any experience as a Public Defender? How long?

2. What percentage of your current cases are DUI?
    a. About how many DUI cases are you involved in per month?

3. In how many counties are you currently defending people charged with DUI? Which counties? How long have you worked in each of these counties?

4. If you have served as a defense attorney for DUI cases in more than one county, have you noticed differences among the counties in DA policy? To what extent (minimal, moderate, great) have you noticed differences regarding the following:

    b. Pleas to alcohol-related reckless
    c. The BAC levels at which pleas to lesser charges are considered
    d. Dismissal of cases
    e. Other

Next, I will go through a series of questions involving workload training and experience. First, I'd like to talk a little about how workload is handled and distributed in your office:

5. Approximately what proportion of DUI cases handled by your office are assigned to NEW (defined as working in your office one year or less) defense attorneys?
   f. Do new defense attorneys assigned to DUI cases receive training and if so, what kind of training do they receive (formal, informal, and how was it administered, e.g. in-house staff, outside trainer, mentor, etc.)?
      i. Has training been administered in this way in this office since you've been here?
      ii. Has it changed over time in content, format of delivery, etc?

6. Did you receive on-the-job training as a defense attorney for DUI cases?
   g. (If Yes) What type of training did you receive (formal, informal, and how was it administered, e.g. in-house staff, outside trainer, mentor, etc.?
   h. (If yes) Are there other things that you would have wanted to be included in that training? (If yes) What specifically?
   c. As you have gained experience in defending DUI cases, do you feel that experience itself is relevant to your effectiveness in defending DUI cases?

7. In addition to alcohol-involved cases, have you defended cases involving drugs and driving impairment?

   a. Compared to alcohol-only DUI cases, are cases involving only drugs and driving or those involving drugs AND alcohol (BAC under .08%)and driving more difficult to defend, and why or why not?
   b. How difficult is it to defend drivers charged with driving while impaired by prescription drugs?

8. To what extent do DUI laws not protect the rights of defendants?

   a. In what ways specifically?

Now I'd like to ask about your experience of how the media and your community feel about DUI issues.

9. How often does your local news have stories on DUI?

   a. Do you think these stories influence how people in your community feel about DUI? In what way?
   b. How often are you interviewed by the media?
   c. Do various grass roots organizations, like MADD, affect your strategies in defending DUI arrestees? How?
   d. How often have such organizations contacted you personally?
   e. How often have such organizations appeared in court when you were defending a DUI arrestee?

Finally, I'd like to ask you a question that has to do with how much work is demanded of our criminal justice system, specifically, the number of cases on court calendars.

10. To what extent (minimal, moderate, great) does a high caseload for the prosecution appear to lead to plea bargaining or a dismissal instead of a DUI conviction?

11. During times when you have a high caseload, how does that affect your ability to fully defend DUI cases? How often do you have a high caseload?

I don't have any more questions for you, but I'd be interested to know if you have anything to add or if you'd like to revisit any of the topics we discussed earlier, or provide any other thoughts that might help us gain better insights into DUI case processes.

Consent to Participate in the DUI Conviction Rate Interview

Over the past several months, you may have seen a DMV survey on DUI conviction rates for those directly involved in prosecuting, defending and adjudicating DUI offenders; this survey as designed to identify possible factors that may contribute to low and high DUI conviction rates. If you were able to respond to the survey, we at the CA State University Institute of Social Research in conjunction with the DMV Research and Development (R&D) Branch wish to thank you for your input and participation.

What we'd like to do today is to go further and obtain your in-depth feedback on possible contributing factors that may influence the DUI conviction rate. We are conducting interviews with a sample of deputy district attorneys, judges and defense attorneys, to get as full a picture of the adjudication process as we can. Your participation in this research is completely voluntary. Signing this form indicates your consent to participate in this DUI conviction rate interview (a copy will be retained for our records and another given to you for your records).

This interview should take about 45 minutes to an hour. Most of the questions are "open-ended" – meaning that there is no "set" answer. We would like you to be detailed in your responses.

I will audio record this interview once we have completed this introduction. Everything you say will be confidential. Let me say a few words about what this means. We are interested in your insights into the DUI conviction process *in your capacity as someone who has been involved in DUI cases.* In other words, we want to understand what you, in your position in the criminal justice process, can tell us about varying DUI conviction rates among counties. When we report the results of this research, we may use specific quotes from this interview – however, we will not use your name. Instead, we will identify you by your position (e.g. judge, prosecutor, defense attorney) and general location (northern, southern or central valley) or groups of counties or by rural/urban designations. Secondly, the only people who will listen to the actual interview tape are myself, a few members of the DMV's Research and Development (R&D) Branch who are working on this study, and the Institute transcriber and his/her managers.

The findings from this project will be reported at presentations within DMV, at traffic safety and other conferences, and in reports and articles. If you would like, we will be happy to provide you with a copy of the main publication that uses data from this interview.

If you have any questions about this project or this interview, I'd be happy to do my best to answer them now. I will also find out the answers to any questions that I cannot answer at this time. If you have any questions after this interview, Dr. Ernest Cowles, Director of the Institute of Social Research and Professor of Sociology, can be reached at (916) 278-4317, cowlese@saclink.csus.edu.

Thank you for helping us promotes traffic safety on our streets and highways!

_____   _____
Signature of Participant   Date

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Appendix C

Appendix Tables

Table C–1

Selected Variables by County

County	Mean DUI conviction rate[a]	Mean DUI arrest rate[a]	Mean conviction BAC level[b]	Mean % blood tests[b]	Mean alcohol reckless rate[b]	Mean alcohol reckless BAC[a]	Violent crime rate[b]	Mean dismissal rate[c]	Median days court lag[c]	Median income[a]	Non-alcohol reckless rate[b]	Other conviction rate[b]
Alameda	67.6	0.7	.162	40.8	9.1	.098	82.0	0.9	98.7	42,360	1.6	2.2
Alpine	73.9	4.2	.165	66.7	12.7	.088	103.5	0.0	49.3	43,124	4.5	0.0
Amador	86.3	1.0	.159	43.2	10.4	.085	34.1	0.7	78.0	37,945	3.7	0.6
Butte	79.8	1.0	.170	37.5	13.0	.109	36.3	2.9	75.3	29,298	5.3	1.5
Calaveras	67.7	0.9	.174	56.5	11.6	.100	12.2	0.8	54.7	37,996	2.5	1.9
Colusa	72.1	2.1	.160	43.3	14.3	.100	36.8	1.3	57.3	26,928	4.1	1.5
Contra Costa	78.8	0.6	.171	38.7	11.2	.100	46.3	0.8	121.7	45,748	0.1	1.2
Del Norte	48.6	1.9	.175	29.6	22.6	.104	32.1	1.3	66.3	30,631	0.7	5.5
El Dorado	77.5	1.0	.168	30.2	8.7	.094	34.5	1.1	78.3	45,487	2.3	0.6
Fresno	66.1	1.3	.160	22.3	10.1	.089	53.8	0.5	111.7	28,035	0.9	0.8
Glenn	63.5	2.3	.160	24.4	8.0	.093	26.8	0.3	46.7	27,789	1.6	2.9
Humboldt	59.3	1.3	.169	26.3	15.3	.102	31.1	0.2	82.0	28,736	3.4	2.5
Imperial	50.4	1.4	.152	11.3	5.2	.097	39.0	1.2	194.3	23,557	5.4	0.7
Inyo	71.4	1.9	.164	37.5	16.4	.094	40.4	0.5	65.3	33,103	0.3	1.5
Kern	80.9	1.2	.163	28.0	9.4	.100	52.6	0.9	32.7	30,207	2.0	1.2
Kings	77.6	1.6	.158	37.5	8.2	.088	35.7	0.5	81.3	28,417	2.9	0.8
Lake	73.5	1.4	.155	31.4	5.8	.092	51.4	1.0	172.7	30,071	2.6	1.7
Lassen	80.8	1.3	.157	19.5	2.1	.079	24.4	0.4	115.0	39,066	4.2	2.7
Los Angeles	73.7	0.7	.159	21.4	7.2	.098	63.2	0.3	65.3	30,822	1.1	4.0
Madera	67.0	1.3	.173	29.5	8.5	.100	52.8	0.9	158.7	28,385	1.3	0.9
Marin	85.8	0.8	.157	42.9	0.0	.000	25.1	0.7	61.7	51,720	0.2	2.3
Mariposa	59.6	0.9	.173	22.1	7.1	.099	27.0	0.3	60.7	31,368	4.2	1.9
Mendocino	77.2	1.3	.163	48.1	16.6	.098	53.3	0.9	42.7	28,680	1.9	1.0
Merced	69.3	1.3	.159	24.0	8.5	.095	64.9	0.8	92.7	26,984	1.2	1.3
Modoc	68.5	1.3	.168	25.0	6.0	.093	49.5	1.3	59.0	27,418	4.1	3.1
Mono	91.1	1.5	.167	25.4	11.6	.108	29.1	0.7	57.3	33,673	2.0	0.7
Monterey	82.8	1.4	.159	25.6	7.9	.093	47.6	0.5	37.7	31,747	3.4	1.0
Napa	84.6	1.2	.162	47.4	8.9	.092	34.2	0.9	59.0	39,151	0.3	0.5
Nevada	81.7	0.9	.167	41.6	15.8	.096	29.9	1.4	55.0	37,468	2.9	1.5

Table C-1 (continued)

Selected Variables by County

County	Mean DUI conviction rate[a]	Mean DUI arrest rate[a]	Mean conviction BAC level[b]	Mean % blood tests[b]	Mean alcohol reckless rate[a]	Mean alcohol reckless BAC[a]	Violent crime rate[b]	Mean dismissal rate[c]	Median days court lag[c]	Median income[a]	Non-alcohol reckless rate[b]	Other conviction rate[b]
Orange	91.2	0.7	.160	58.5	4.7	.086	27.1	0.5	89.0	38,150	0.5	0.8
Placer	91.9	0.9	.155	47.8	6.1	.086	25.3	0.4	70.7	44,034	0.6	0.4
Plumas	79.2	1.4	.165	29.0	16.1	.111	17.1	0.4	57.7	34,789	4.2	0.4
Riverside	84.8	0.8	.160	53.8	1.8	.103	46.8	0.6	73.3	32,748	3.0	0.8
Sacramento	73.8	0.9	.158	47.0	10.4	.091	77.7	0.2	53.7	36,306	0.3	1.1
San Benito	87.1	1.0	.158	53.6	9.5	.084	29.2	0.6	112.0	36,987	1.8	1.3
San Bernardino	75.4	1.0	.162	69.7	3.9	.099	49.2	1.1	100.3	31,778	2.2	2.7
San Diego	81.6	0.8	.159	39.8	9.9	.092	44.0	0.3	80.3	36,081	1.7	0.7
San Francisco	58.2	0.3	.169	24.0	13.6	.112	82.3	1.9	76.3	41,801	10.3	0.9
San Joaquin	74.6	1.1	.163	32.8	9.2	.091	90.2	0.5	63.7	33,825	1.3	1.0
San Mateo	76.7	0.7	.161	34.5	12.9	.094	30.1	0.5	112.7	48,117	1.9	3.0
San Luis Obispo	75.1	1.3	.164	39.5	15.8	.097	28.0	0.9	45.3	35,963	0.7	1.8
Santa Barbara	87.8	1.0	.163	35.2	12.6	.091	41.6	0.4	52.3	34,764	3.6	1.1
Santa Clara	85.2	0.6	.164	68.2	8.6	.088	30.4	0.0	68.0	47,283	1.6	1.0
Santa Cruz	82.0	1.0	.169	38.7	12.2	.093	41.1	0.4	62.3	35,062	1.3	1.0
Shasta	91.6	0.9	.166	41.3	11.0	.082	35.9	0.5	76.0	32,182	1.0	0.9
Sierra	47.2	2.4	.172	27.3	15.2	.111	28.6	0.3	85.7	35,408	2.5	0.0
Siskiyou	76.4	1.1	.169	39.4	14.0	.087	33.3	1.2	65.7	28,202	1.6	0.4
Solano	84.7	0.7	.166	35.8	11.5	.091	59.8	1.7	83.3	40,641	1.3	1.2
Sonoma	77.3	0.9	.164	18.7	17.9	.104	45.0	1.7	53.7	38,714	1.5	0.6
Stanislaus	64.1	0.9	.160	22.1	7.1	.092	58.9	0.2	69.0	32,185	1.3	0.8
Sutter	64.1	1.1	.170	38.1	14.8	.098	44.5	0.5	58.0	31,013	0.5	0.5
Tehama	55.3	2.1	.170	42.1	9.4	.096	73.8	1.0	54.3	28,417	1.3	0.1
Trinity	41.1	2.0	.168	31.3	10.2	.096	16.2	0.2	72.0	28,214	0.0	0.0
Tulare	73.0	1.6	.159	55.0	2.0	.086	57.4	0.4	48.3	25,528	0.2	1.7
Tuolumne	84.1	1.1	.165	33.6	12.3	.098	24.8	0.3	55.3	33,040	3.0	0.6
Ventura	87.6	0.8	.159	25.7	0.0	.000	27.1	0.6	62.0	38,200	0.1	1.2
Yolo	72.0	1.0	.161	33.6	15.2	.088	42.7	0.5	103.0	35,808	2.0	0.7
Yuba	58.4	1.5	.160	39.3	9.9	.090	46.4	1.0	75.0	30,240	0.4	0.3

Note. See Table 1 in the Methods Section for a description of each variable. DUI = driving under the influence of alcohol/drugs. BAC = Blood alcohol concentration.
[a]2000-2006. [b]2006. [c]2004-2006.