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Volume I: Summary

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EXECUTIVE SUMMARY

This report is the product of a study entitled "DWI Charge Reduction Study", which was conducted by Mid-America Research Institute, Inc., under National Highway Traffic Safety Administration contract number DOT-HS-8-02024. The study responds to the problem of charge reduction in drunk-driving cases. The term "charge reduction" refers to plea bargaining which allows defendants charged with drunk driving to plead guilty to lesser, non-alcohol related charges, and to prosecutor- or judge-sponsored programs under which a drunk driving defendant "earns" a reduced or dismissed charge, even though the evidence justifies a drunk driving conviction.

Charge reduction defeats the objectives of drunk driving legislation in a number of ways:

- **Defendants who plead guilty to lesser charges, or who avoid conviction entirely, avoid sanctions.** They receive neither the criminal and administrative sanctions that are intended to deter them from committing subsequent offenses, nor the treatment directed at their underlying alcohol problems.
- **Dismissals and convictions of lesser charges leave no indication of alcohol involvement on the driver's record.** If the driver is rearrested, he or she could again be treated as a first offender.
- **More generally, widespread plea bargaining and charge reduction result in uneven punishment of defendants factually guilty of the same offense.** This lessens public perception about the seriousness of drunk driving, and undermines public confidence in the performance of the criminal justice system.

It is commonly believed that charge reduction is a response to drunk driving legislation considered too harsh or inflexible, lack of prosecutorial or judicial resources, "bottlenecks" within the criminal-justice system, and legal and political constraints on drunk-driving prosecution. On the other hand, it is known that an increasing number of jurisdictions had, by state statute or prosecutorial policy, eliminated or restricted charge reduction in drunk driving cases. To the extent that those no-charge reduction programs survived time and adversity, they can be considered successful. **A major objective of this study was to determine**

why programs in those jurisdictions succeeded; if those in other jurisdictions could learn the specific factors that led to success elsewhere, they would be better able to replicate that success locally.

The general objectives of this study were:

- **To identify and select jurisdictions for study.** Drawing on the results of a literature search, traditional legal research and analysis, and telephone contacts with practitioners, Mid-America identified potential jurisdictions for study. Mid-America and NHTSA made further contact with a set of candidate sites to determine whether charge reduction was in fact prohibited, what data were available, and whether site personnel would cooperate with the study. Five jurisdictions--Fort Smith, Arkansas; Madison/Dane County, Wisconsin; Ventura County, California; Baton Rouge, Louisiana; and Chattanooga, Tennessee--were eventually selected for site visits.
- **To perform in-depth studies of case processing in the five selected jurisdictions.** Using a discussion guide developed by Mid-America, in conjunction with NHTSA staff and a nationally-known authority on drunk driving prosecution, Mid-America staff met with criminal-justice system personnel in each of the five selected sites. Individuals contacted during the site visits included the following: the prosecuting attorney; trial court judges; representatives of law-enforcement agencies (including the agency operating the jail); probation and treatment agency personnel; legislators; and citizen activists. Those contacted on site were questioned about the processing of drunk driving cases, the reasons for eliminating or restricting charge reduction, and what impact the no-charge reduction program had on the criminal-justice system. Respondents were asked to provide quantitative data relating to charging and case dispositions.
- **To prepare a final report to assist prosecuting attorneys, judges, legislators, and highway safety specialists considering implementing their own charge-reduction policies.** Volume I of the final report sets out the findings of this study, including the impact of no-charge reduction policies on the study sites' criminal-justice systems. Volume I also sets out specific recommendations for those within jurisdictions other than the study sites, and presents a step-by-step strategy for implementing a no-charge reduction policy. Volume II presents detailed case studies of the five selected jurisdictions. Those case studies are intended to allow others to compare their own jurisdictions' systems and those systems' processing of drunk drivers with that of the study sites, and to determine whether a no-charge reduction policy is suitable to their own jurisdictions.

Volume I of the final report presents a summary of the study and presents a strategy for implementing a charge-reduction ban. Section 1.0 provides an introduction to the study.

Section 2.0 presents background information on the problem of charge reduction. It outlines the major responses to that problem, namely state legislation prohibiting or restricting charge reduction, and prosecutorial policies against agreeing to the reduction or the dismissal of charges, and sets out the limits of the effectiveness of anti-charge reduction efforts.

Section 3.0 details the study method for this project. It explains the steps taken in the process of identifying and selecting the five sites visited by Mid-America staff. Those steps included a literature search and law library research; telephone contacts with prosecutors, traffic-safety personnel, and others; and evaluation of possible sites by Mid-America and NHTSA. That section also sets out the site-selection criteria used by Mid-America and NHTSA--existence of a no-charge reduction policy; availability of data; and likely cooperation by personnel in the site--and deals with how the five site visits were conducted.

Section 4.0 presents the major findings of the study. The first part of the section focuses on findings relating to project design and execution. It was generally found that suitable sites were located through personal contact rather than traditional research methods, that personnel in most potential sites were likely to cooperate, and that qualitative information was plentiful but that there was a lack of quantitative data in a form suitable for analysis.

The second part of Section 4.0 sets out the substantive findings of the study. Those findings related to the sites' legal environment, personnel within the sites, and the impact of no-charge reduction policies on the sites' criminal-justice systems. The major findings relating to the sites' **legal environments** include the following:

- Prosecuting attorneys implemented no-charge reduction policies before legislation on that subject went into effect.
- Favorable legislation, especially legislation establishing a "per se" standard of intoxication, enabled prosecutors to obtain more convictions as charged and to take a more aggressive stance with respect to charge reduction.
- Legislation that mitigated mandatory jail and license-

suspension penalties increased defendants' incentives to plead guilty as charged.

- Recent changes in public opinion have helped prosecutors' efforts to eliminate charge reduction.

The major findings relating to **personnel within the sites** include the following:

- In successful sites, the charge-reduction ban enjoyed support from others within the criminal-justice system as well as from the news media.
- Each site had one or more strong figures who served as an advocate for eliminating charge reduction or as a system "watchdog".
- There was cooperation, and especially communication, among members of the criminal-justice system.
- Key individuals within the sites maintained the no-charge reduction policy in spite of adversity.
- Successful sites enjoyed adequate system resources, such as personnel and recordkeeping systems.
- Prosecuting attorneys, law-enforcement agencies, and others connected with the elimination of charge reduction enjoyed public support.

Major findings with respect to **the impact of the no-charge reduction policy on the criminal-justice system** included the following:

- An increase in trial caseloads, resulting from greater numbers of drunk driving defendants demanding trials, occurred in some, but not all sites.
- In two sites, there was a sharp increase in the drunk driving conviction rate; in the other three sites, conviction rates already were high before charge reduction was eliminated and did not materially change afterward.
- Cooperation by trial judges was essential to the success of efforts to eliminate charge reduction.
- Other impacts, observed in some sites, included initial skepticism by judges and law-enforcement agencies, disappointment with the prosecuting attorney's failure to file charges in certain cases, and an increase in jail populations.

The final part of Section 4.0 dealt with limitations of the quantitative data and the methodological problems of measuring the impact of the no-charge reduction policies.

Section 5.0 contains a guide for eliminating charge reduction in jurisdictions other than the study sites. The first part presents two major strategies for doing away with charge reduction--legislation and prosecutorial policy--and sets out the available options for those considering implementing either strategy. The next part of the section presents a step-by-step strategy for eliminating charge reduction. The steps are as follows:

- Identifying the major obstacles to implementation.
- Identifying all key actors within the system.
- Calling a meeting of the key individuals and discussing the proposed elimination of charge reduction.
- Soliciting the support of key actors.
- Detailing the policy to all system personnel.
- Publicizing the policy.

The remainder of Section 5.0 stresses that it is overly optimistic to expect to demonstrate the success of a no-charge reduction program through quantitative evidence of highway-safety impact, and that it is essential to follow up on a charge-reduction ban after it goes into effect.

Volume I also contains three appendices. Appendix A contains a list of individuals who were contacted in connection with selecting sites for this study. Appendix B lists the sites that Mid-America recommended during the intermediate phases of site selection for this project. Appendix C contains the discussion guide used by Mid-America staff during its five site visits.

Volume II of the final report contains in-depth system descriptions prepared for each of the five sites visited during this project. Each system description presents background information on the jurisdiction, summarizes key provisions of its alcohol and highway safety legislation, describes the process by which charge reduction was eliminated or restricted, details the processing of drunk drivers, and concludes with a series of observations about the effects of eliminating charge reduction in that jurisdiction.

1.0 INTRODUCTION

This is the final report on a project entitled "DWI Charge Reduction Study", performed by Mid-America Research Institute, Inc. for the National Highway Traffic Safety Administration under NHTSA contract number DTNH-22-84-R-05087. This report consists of two volumes. Volume I describes the study method, findings, and conclusions. Volume II contains system descriptions of the five sites--Fort Smith, Arkansas; Madison/Dane County, Wisconsin; Ventura County, California; Baton Rouge, Louisiana; and Chattanooga, Tennessee--that Mid-America staff visited in connection with the study.

The purpose of this volume is to:

- Describe how the study was conducted. That description includes the criteria used to select jurisdictions, and the questions that were asked on site about the selected jurisdictions and their criminal-justice systems.
- Set out the major findings derived from the project staff's visits to five jurisdictions that prohibited charge reduction.
- Identify the factors that should be taken into account by other jurisdictions considering implementing no-charge reduction policies.

This report is intended for use by prosecuting attorneys, judges, legislators, and traffic safety specialists who are considering eliminating or restricting charge reduction in drunk driving cases within their own jurisdictions.

The remainder of this report consists of four sections and two appendices. Section 2.0 is a background section dealing with charge reduction and efforts to limit it. Section 3.0 presents the study method. Section 4.0 sets out the major findings of this study. Section 5.0 outlines a strategy for eliminating charge reduction in jurisdictions other than those studied here. Appendix A contains a list of individuals contacted in connection with selecting sites for this project. Appendix B lists the sites that Mid-America recommended during the intermediate phases of site selection for this project. Appendix C contains the discussion guide used by Mid-America staff during its five site visits.

2.0 BACKGROUND

2.1 The Problem of Charge Reduction

This study is the result of the growing public concern over prosecutors' charging and judges' disposition practices that result in drunk drivers pleading guilty to nonalcohol-related offenses or participating in programs under which an alcohol-related conviction is avoided.

The term used in this study and report is "**charge reduction**", which means the decision by a prosecuting attorney to allow the defendant to offer a guilty plea to a less serious, nonalcohol-related charge, and the decision by the judge to accept the plea, for reasons other than inability to prove guilt on the merits. Charge reduction includes traditional plea bargaining as well as certain prosecutor- or judge-controlled programs in which a defendant charged with drunk driving "earns" a dismissed or reduced charge.

The study occurs in the context of recent legislation that imposes more severe, and often mandatory, penalties for drunk driving. Those penalties, especially mandatory jail terms and license suspension, tend to create additional incentives for a defendant charged with drunk driving not to plead guilty and instead contest the charge at trial. In criminal law, plea and charge agreements are common ways of disposing of cases and relieving pressure on the criminal-justice system, and that phenomenon occurs in the adjudication of drunk driving cases as well.

Prosecuting attorneys engage in the reduction of drunk driving charges for several reasons. One reason, as mentioned above, is that the legislatively-mandated penalties for drunk driving may be considered too severe or the mechanism for imposing them too inflexible: the laws may be seen as an appropriate response to drunk drivers in general but not the particular defendant before the court. A second reason for charge reduction is the belief that inflexibly applying the drunk driving laws at the prosecution stage would impair the functioning of the criminal justice system elsewhere; certain plea bargains to lesser charges may be preferable to other outcomes, such as diversion, dismissal, not-guilty verdicts, or caseloads too large for probation and corrections elements of the system to handle. Other possible reasons include: the belief that treatment is

preferable to traditional criminal sanctions; sympathy for the defendant; and a desire on the prosecution's part to retain bargaining power, for example, to prosecute other, more culpable defendants.

However, when a defendant charged with drunk driving avoids being convicted of that offense, that outcome undercuts the intent of drunk driving laws in several respects. The driver who avoids a mandatory license suspension (or a mandatory jail term) avoids the incapacitative effects of those punishments and is thus more likely to drive again while intoxicated. The driver who avoids receiving alcohol treatment that follows a drunk driving conviction may continue driving in spite of an untreated alcohol problem and may pose a greater risk of committing additional offenses.

Charge reductions that avoid mandatory penalties specific to drunk driving not only reduce the special deterrent effect of drunk driving laws but also undercut general deterrence by creating the impression that prosecution and sanctioning do not occur. A charge reduction that results in a guilty plea to a nonalcohol-related charge, or the defendant's diversion from the criminal-justice system, can create an additional problem: when the driver who pled guilty to the reduced charge is arrested a second time for drunk driving, he or she again could be processed as a first offender and avoid the punishment and treatment the repeat offense deserves.

2.2 Responses to Charge Reduction

Dissatisfaction with charge reduction in drunk driving prosecutions has led to efforts within the legal system to eliminate or restrict that practice. One means of increasing the probability that drunk driving defendants are convicted of and sanctioned for that offense is to limit, by statute, the prosecutor's traditional authority to make plea bargains in which the defendant pleads guilty to a less serious offense. The power to plea bargain is normally inherent in the prosecuting attorney and the trial judge; in the absence of specific legislation to the contrary, its use is neither required nor forbidden. In December 1984, when Mid-America staff conducted its research of state legislation, 23 states placed some form of restriction on prosecutors' charging practices and judges' power to divert offenders or suspend the imposition of defendants' punishment for drunk

driving. The statutory restrictions ranged from disclosure requirements that "chilled" rather than forbade plea bargains to nonalcohol-related offenses, to statutes that required the prosecution of defendants accused of drunk driving on that charge, and forbade pleas of guilty to less serious offenses unless the evidence required to convict was lacking.

Statutes limiting charge reduction are only one of a number of legislative and legal-system actions taken in recent years to combat drunk driving. In many jurisdictions, statutory restrictions on plea bargaining, diversion, and similar practices were imposed as part of a "package" of amendments that included heavier penalties, "per se" definitions of intoxication, administrative license-removal procedures, and additional restrictions on the availability of alcohol.

Another means of controlling charge reduction is through policy decisions by prosecuting attorneys themselves. Since charge reduction normally results from an exercise of discretion, a no-charge reduction policy can be effected without legislation. Prosecuting attorneys and judges have the authority to implement policies requiring charging accused drunk drivers with that offense, and controlling plea agreements to non-alcohol related charges; that is presently the case in a large number of jurisdictions nationwide. In some jurisdictions, plea bargaining was eliminated in drunk driving cases as part of a more general policy against plea bargaining in all criminal actions.

Although the most objectionable forms of charge reduction, such as diversion and plea bargaining without recordkeeping that make it possible for a driver to be a "perpetual first offender", have largely disappeared in recent years, charge reduction is still considered prevalent enough to warrant concern.

2.3 Effectiveness of Charge-Reduction Restrictions

Admittedly, limiting or eliminating prosecuting attorneys' discretion with respect to drunk driving will not eliminate the possibility that a person factually guilty of drunk driving will be charged with, convicted of, and sentenced for that offense. Offenders still may be "lost" within the system, or may not enter the system in the first place, as the result of other actions, including:

- A police officer's decision not to stop a suspected drunk driver, or not to charge the suspect with that offense.
- The trial judge's decision to accept the defendant's guilty plea "under advisement" and later dismiss or reduce the original drunk driving charge.
- Jury "nullification", that is, the jurors' decision to find a defendant not guilty or guilty of a less serious offense in spite of evidence that would warrant conviction.
- Delays in adjudication due to heavy caseloads, poor recordkeeping, or policies giving the adjudication of drunk driving cases a low priority.

Thus, given the complexity of the criminal-justice system, efforts to control charge reduction could--but do not inevitably--lead to some other dysfunction, ranging from increased use of pretrial diversion or postconviction pleas under advisement to reluctance on the part of police officers to arrest suspects. What effects, if any, occur will vary from one jurisdiction to another.

3.0 STUDY METHOD

This project was an attempt to find jurisdictions that have eliminated charge reduction, detail the reasons for those jurisdictions adopting no-charge-reduction policies, and assess the effects of those policies. Those effects include the impact of the no-charge-reduction policy on the criminal-justice system--law enforcement, the courts, corrections, and probation and treatment--as well as the impact of the policy on the driving public (that is, whether the policy has reduced recidivism among those convicted and punished, and produced any general deterrent effect).

Although this study was for the most part qualitative, project staff made every reasonable effort to obtain relevant quantitative data, such as past studies of highway safety impact and **aggregated** data relating to the disposition of drunk driving cases. We use the term "aggregated" to distinguish data that have previously been collected from case files and combined into analysis files. The project did not attempt to create analysis files from case records, for example, tracing a cohort of offenders through the system to determine the mean time before case disposition.

3.1 Site Selection

3.1.1 Identification of Candidate Jurisdictions. Much of the early activity associated with this project was concerned with the identification of sites that project staff could visit. Several sources were used to compile an initial list of candidate sites:

- State drunk-driving legislation that imposed restrictions on reduction or dismissal of charges. States with those restrictions were identified through the National Highway Traffic Safety Administration's A Digest of Alcohol-Related Highway Safety Legislation, and law library research performed by project staff.
- Literature searches, including a search of NHTSA's Alcohol Awareness Information Retrieval System and Mead Data Central's NEXIS(R) on-line database.
- Telephone contacts with the following individuals: alcohol specialists within NHTSA regional offices; governor's highway safety representatives in those states whose laws specifically restricted charge reduction, and in those states identified by the regional offices' alcohol

personnel; and individuals, such as prominent prosecuting attorneys, who were knowledgeable about the drunk driving charge-reduction policies nationwide. A list of those contacted appears in Appendix A.

Mid-America's project staff discovered early in the project that most of the jurisdictions in which charge reduction has been restricted, whether by statute or by prosecutorial policy, were located in the West or the South. The East and Midwest lacked candidate sites for this study for a number of reasons, including: legislation containing two-tiered definitions of drunk driving that encouraged plea bargaining to lesser, but still alcohol-related, charges; the existence of statewide statutory diversion programs under which first offenders avoided some, but not all, of the mandatory sanctions for drunk driving; the decentralization of adjudication and sanctioning to the point that jurisdictions were too small to study; and, in some states, the absence of suitable sites.

In the course of making contacts during the site-selection process, project staff discovered a number of jurisdictions in which state agencies, such as the Arkansas Highway Safety Program, or outside evaluators, such as those involved with the National Highway Traffic Safety Administration's Target of Opportunity program, were already studying drunk driving adjudication and sanctioning.

At a very early stage of this project, Mid-America retained the services of an individual with extensive experience in drunk-driving prosecution. That individual was David H. Hugel, J. D., State's Attorneys Coordinator, University of Maryland School of Law. Mr. Hugel, who served as a consultant to this study, provided advice with respect to criteria for site selection and identification of topic areas to be discussed with criminal-justice system personnel; he also reviewed and commented on Mid-America's draft system descriptions.

3.1.2 Selection of Jurisdictions for Preliminary Contacts. Based on the research carried out from January through March 1985, and on the comments of Mr. Hugel, Mid-America evaluated potential candidate sites on the basis of three factors:

- The existence of a policy against charge reduction.
- The willingness of individuals within the jurisdiction's

criminal-justice system to cooperate with the study.

- The availability of data relating to charging and dispositions.

On the basis of that evaluation, Mid-America selected the sites that appeared most promising. In a report entitled "Recommendation of Candidate Sites", project staff strongly recommended making further contact with eight sites and also recommended giving further consideration to 17 others. Sites were classified as "strongly recommended" if information gathered suggested the high probability of a no-charge-reduction policy, the likelihood of finding usable disposition data, and the apparent willingness of personnel in the site to cooperate. Jurisdictions in the "recommended" category exhibited the same qualities to a lesser extent, and had the potential to advance to the "strongly recommended" category if more information were available or more evidence of willingness to cooperate shown. Appendix B lists the sites that Mid-America considered "highly recommended" and "recommended".

Mid-America's report listing the identified sites, evaluating each one, and presenting overall recommendations was submitted to Robert Stone, Esq., NHTSA's Contract Technical Manager, in April 1985. NHTSA, in turn, recommended nine sites for further study:

- Baton Rouge, Louisiana.
- Bernalillo County (Albuquerque), New Mexico.
- Biloxi/Gulfport, Mississippi.
- Chattanooga, Tennessee.
- Dane County (Madison), Wisconsin.
- Fayette County (Lexington), Kentucky.
- Jackson, Mississippi.
- Sebastian County (Fort Smith), Arkansas.
- Ventura County, California.

Project staff attempted to contact the prosecuting attorney within each of the above sites. In sites where a federally- or state-funded drunk driving project was in place, project staff also attempted to contact the coordinator of that project. The major questions addressed in those contacts were:

- Did the jurisdiction in fact prohibit or restrict charge reduction?
- Were personnel within the criminal-justice system likely to cooperate with the study?
- Were good data on justice system activity--especially case dispositions--available and, if so, were they of good quality?

Project staff also asked the prosecuting attorney or project coordinator to identify specific individuals representing various functions within the jurisdiction's criminal-justice system. Those functions included: judiciary; court records; law enforcement; corrections; probation and treatment; criminal defense; and citizen activist. Contacts within the sites were also asked to supply the names of other key individuals, such as state legislators or mayors, who had influenced legislation, prosecutorial policy, or the processing of drunk driving cases within that jurisdiction.

3.1.3 Selection of Jurisdictions for On-Site Study. After making the second round of telephone contacts, Mid-America evaluated the strength of the jurisdictions' plea-bargaining or charge-reduction bans, the expected level of cooperation by site personnel, and the quality and availability of data for each of the nine candidate sites. As a result of that evaluation, Mid-America submitted another report, entitled "Report on Findings After Contacts", to the Contract Technical Manager. Based on that report, NHTSA and Mid-America agreed that the following five sites should be visited:

- Fort Smith.
- Madison/Dane County.
- Ventura County.
- Baton Rouge.
- Chattanooga.

3.2 Site Visits

Visits to the five selected jurisdictions took place during July, August, and September 1985. Mid-America staff who visited sites included: Ralph K. Jones, President; Paul A. Ruschmann, J. D., Project Director; and Susan S. Swantek, J. D., Senior Staff Attorney. Project staff met with the prosecuting attorney in each of the jurisdictions, as well as trial court

judges, police department administrators, court clerks, driver-licensing officials, probation department personnel, law-enforcement personnel responsible for maintaining the jail, persons responsible for overseeing alcohol education and treatment programs, state legislators, and representatives of citizen advocacy groups. The questions asked during the site visits were based on a discussion guide prepared by Mid-America staff, the Contract Technical Manager, and David Hugel, and adapted to local conditions in the sites. The discussion guide is Appendix C to this report.

After meeting with criminal-justice system personnel in the sites, Mid-America staff prepared draft system descriptions that set out general background about each site, its court and law-enforcement system, pertinent alcohol-related highway safety legislation, the history of charge reduction within that jurisdiction, and a detailed description of how drunk drivers are processed by the law-enforcement, adjudication, and probation, corrections, and treatment components of the system. The draft system descriptions were returned to individuals within the sites for their review, and appropriate revisions were made. Volume II contains the full text of the revised system descriptions.

4.0 MAJOR FINDINGS

4.1 Findings Related to Project Design and Execution

4.1.1 Site Selection. During the site-selection process, project staff discovered that it was difficult to locate suitable sites in states where legislation did not specifically restrict charge reduction. **No traditional source of legal or popular literature was found that contained reliable information relating to prosecution policies on the reduction of drunk driving charges.** In some instances, jurisdictions "known" to have such a policy in place in fact did not, for example, because important exceptions existed to the policy or the incumbent prosecuting attorney had left office. **Nevertheless, telephone contacts with federal and state traffic-safety specialists and prosecuting attorneys familiar with drunk driving prosecution nationwide identified a number of jurisdictions in states without specific legislation.**

The five sites visited in connection with this study are not necessarily examples of the "toughest" jurisdictions for drunk driving prosecution and sentencing: Mid-America's researchers found, for example, that Anchorage, Alaska and the state of New Jersey imposed heavier penalties than those imposed in the sites studied here. But this study's five sites provide some of the nation's best examples of how criminal justice systems' treatment of drunk drivers, especially charging practices, changed, and what forces brought about those changes; that information is of more direct use to those considering whether to eliminate or restrict charge reduction within their own jurisdictions.

The five study sites provided a good cross-section in that they were diverse in terms of geography, social and political views, and alcohol-related highway safety legislation. In spite of their diversity, the sites had a number of common attributes.

4.1.2 Cooperation by Site Personnel. **In most instances, the individuals contacted in the sites were both cooperative and interested in participating in the study.** Some prosecuting attorneys proved difficult to locate, which was not surprising considering their busy schedules and their courtroom and administrative responsibilities. The assistance lent by prosecuting attorneys, as well as by others within the sites, was a major

factor in selecting the five jurisdictions to be studied.

4.1.3 Availability of Data. **Because of the high level of cooperation by site personnel, qualitative information was readily available about the sites, their charge-reduction practices, and the operation of their criminal-justice systems.** However, as was expected, finding appropriate quantitative data--including that relating to charging and case dispositions (to measure case-processing performance and conviction rates), and alcohol-related traffic crashes (to measure the highway safety effect of charge-reduction restrictions)--proved to be the most difficult task in this project.

The difficulty resulted, in part, from data not being complete enough or maintained in the form required for this study, and in part from the inability of sites to locate and forward data requested by Mid-America during the site visits. Other reasons why data were difficult to obtain included incomplete records, especially for years before 1980, and variations between police departments and courts with respect to the type of data kept. We note that these problems are not in any way unique to the sites examined in this study. On the contrary, the fact that any useful data at all were available was unusual and must be attributed at least in part to the care taken by NHTSA and Mid-America in selecting the case-study jurisdictions.

Measuring the effect of the jurisdictions' charge-reduction policies also presented a methodological problem, namely that a variety of other changes, ranging from stepped up enforcement and more severe penalties to increased public awareness of the drunk driving problem, coincided with the restrictions placed on charge reduction.

4.2 Substantive Findings

4.2.1 The Legal Environment Surrounding Charge Reduction.

- **Charge reduction was initially eliminated in all five study sites by prosecutorial policy rather than legislation; thus, later legislative developments followed, rather than caused, the elimination of plea bargaining from those sites.** One of the five sites visited in connection with this study, Fort Smith, was located in a state that prohibited charge reduction. Two sites, Madison/Dane County and Ventura County, were located in states with legislation that

restricted, but did not prohibit, the practice. The remaining sites, Baton Rouge and Chattanooga, were located in states with no direct legislative restrictions. In Ventura County, charge reduction was eliminated in drunk driving cases as part of a ban on plea bargaining in all criminal cases.

- **Alcohol-safety legislation, other than legislation directed at charging practices themselves, played an important part in making the prosecutors' charge-reduction bans a success.** Sources in several sites remarked that the adoption of a "per se" standard of legal intoxication especially increased the likelihood that a person charged with drunk driving would plead guilty to or, if he or she pled not guilty, would be convicted of, drunk driving.
- **Legislation that provided defendants a "carrot" in the form of mitigated jail or license-suspension penalties also provided an incentive for some first offenders to plead guilty as charged.** For example, when the Arkansas legislature added a hardship-license provision to its drunk driving laws in 1985, the number of not-guilty pleas reportedly declined and possible system bottlenecks might have been averted.
- **The recent shift in public opinion toward drunk driving--especially increased public perception of the seriousness of that offense--has helped no-charge reduction programs succeed.** In Ventura County, for example, juries became increasingly likely to return guilty verdicts against defendants charged with drunk driving; trial judges, apparently honoring public opinion, imposed harsher penalties on convicted offenders. In Chattanooga, a combination of public opinion, harsher penalties required by law, and a prohibition of diversion created a legal atmosphere that was more conducive to prohibiting charge reduction.

4.2.2 Personnel Within the Sites' Criminal Justice Systems.

- **In all of the sites visited during this project, one important factor in the success of the charge-reduction ban was support from others in the criminal-justice system as well as from the news media.** In Fort Smith, for example, those within the system enjoyed a continuing working relationship with the media; in a number of sites, the prosecuting attorney praised the trial court bench for leadership with respect to adjudication and sanctioning.
- **Each site had one or more strong figures who decided that it was necessary to change the way in which the system handled drunk drivers, and took action to bring about those changes.** The District Attorney assumed that role in Dane County, Wisconsin and Ventura County, California. In Fort Smith, the key actor was an administrator of a mental-health agency

who had extensive contacts with criminal-justice system personnel as well as the news media; and in Baton Rouge, the leader held the dual position of clerk and judicial administrator who improved the court's administrative practices and acted as a system "watchdog". Chattanooga's Remove Intoxicated Drivers chapter has closely monitored the adjudication of drunk driving cases in that jurisdiction.

- **The sites enjoyed cooperation, and especially communication, among the prosecuting attorney's office, the trial court bench, and law-enforcement officials.** In Fort Smith, the Sebastian County DWI Systems Approach provided the framework for regularly-scheduled meetings of system personnel; similar meetings occurred in Baton Rouge and Fort Smith as the result of specific programs directed at drunk driving. Ventura County's campus-like county government complex lent itself to a regular working relationship among system personnel.
- **In each site, key individuals within the each site's system maintained the no-charge reduction policy in spite of adversity.** Sources within Ventura County's criminal-justice system reported that the District Attorney's office endured several months in which the trial load more than doubled, as well as initial skepticism on the part of some judges and police officers, before establishing that a no-charge reduction policy would succeed there.
- **All of the sites enjoyed adequate system resources,** such as good court recordkeeping systems and a sufficient number of judges and prosecuting attorneys to process cases without encountering backlogs. In both Fort Smith and Baton Rouge, major improvements in court recordkeeping occurred at or about the same time charge reduction was eliminated from drunk-driving prosecutions; in Baton Rouge, a judge's position was added to the City Court bench as part of a comprehensive anti-drunk driving effort.
- **The prosecuting attorneys and others within the system enjoyed public support for their efforts,** that is, a favorable or at least neutral public attitude to the policy against charge reduction. Drunk driving was an issue in the 1978 election campaign for Dane County District Attorney; the "law and order" theme was a dominant one in the 1978 elections for District Attorney and judicial positions in Ventura County.

4.2.3 Effects on the Criminal-Justice System.

- **One of the most significant impacts to be expected from the elimination of charge reduction is an increase in the number of demands for trials. That effect, however, apparently did not occur in all of the sites.** The most marked effect occurred in Ventura County, where the number of jury trial demands doubled in 1979, the first year the plea-bargaining

ban was in effect. Reports from Fort Smith suggest that an increase in trial caseloads occurred there after Arkansas' 1983 legislation prohibited charge reduction.

- **Another expected impact of the elimination of charge reduction, an increase in the conviction rate for drunk driving, occurred in some, but not all sites.** In Fort Smith, where an upgrading of court recordkeeping practices, the initiation of a federally-funded "DWI Systems Approach", and changes in the funding of the city prosecutor's office accompanied state legislation prohibiting charge reduction, the conviction rate on the original charge reportedly increased from about 35 percent in 1980 (date approximate) to greater than 90 percent in 1984. In Chattanooga, where judges ended their practice of routinely reducing charges after the Tennessee legislature rewrote that state's drunk-driving laws in 1982, the conviction rate rose from about five percent in 1980 (date approximate) to 84 percent in 1984. However, the conviction rates in Madison/Dane County, Ventura County, and Baton Rouge (where there is no jury trial for first and second offense drunk driving) were already high before the elimination of charge reduction, and changed only slightly afterward.
- **The elimination of charge reduction, combined with more severe penalties for drunk driving, encouraged delaying tactics by the defense in one site, Chattanooga.** It was estimated that the mean time from arrest to trial increased by 200 percent in Chattanooga. Conversely, changes in court management, which occurred at the same time as the elimination of charge reduction, greatly decreased the time from arrest to disposition in Baton Rouge City Court.
- **The cooperation of the trial court bench proved to be essential to the success of efforts to eliminate charge reduction.** The chief factor for an increase in the conviction rate in Chattanooga was the willingness of that city's trial judges to abandon their policy of wholesale charge reduction. In Ventura County, despite reports of some judicial resistance to the District Attorney's ban on plea bargaining, the Municipal Court bench has consistently taken a hard line toward drunk driving offenders. In Madison/Dane County, the Circuit Court bench agreed to follow a set of sentencing criteria that resulted in "aggravated" offenders (those who refused chemical tests, had very high blood alcohol levels, or engaged in dangerous driving behavior in addition to driving while intoxicated) receiving sanctions more serious than the minimum penalties required by law.
- **In some sites the no-charge reduction policy, combined with mandatory jail sentences for multiple offenders, caused an increase in the number of convicted, drunk drivers going to jail.** In Ventura County, over 35 percent of the county jail system's population had been convicted of alcohol- or drug-

related charges.

- **Some individuals within law-enforcement agencies reportedly reacted with initial skepticism to the elimination of plea bargaining in one site, Ventura County.** That reaction was due in part to higher standards of documenting arrests and preparing for possible trial, which increased officers' workloads. The skepticism also appeared to be a result of the District Attorney's refusal to file charges in cases that officers believed were "worth" at least a guilty plea to "wet" or alcohol-related reckless driving, itself a serious traffic offense in California.

Overall, personnel in all five sites implemented a no-charge reduction policy and, with only minor exceptions, that policy was for the most part adhered to. All sites were examples of systems that found a combination of the "right conditions" for the elimination of wholesale plea negotiation and charge reduction in drunk driving cases.

4.3 Limitations of the Data

This study assessed the value of no-charge reduction programs in terms of their effect on criminal justice system performance rather than their effect on highway safety. An impact evaluation was beyond the scope of this study.

Nevertheless, **anecdotal evidence suggests that no-charge reduction policies and legislation may have had a highway safety effect,** although the precise magnitude of that effect could not be determined in this study. Reports of increasing numbers of drunk drivers jailed in Fort Smith, Madison/Dane County, and Ventura County suggest that former "perpetual first offenders" are now being caught and punished for drunk driving, and eventually dealt with as multiple offenders. Many contacts in the five study sites believed that the recent nationwide anti-drunk driving campaign--of which charge-reduction restrictions are a part--has deterred many individuals from driving after drinking. Accounts from sources in the sites also suggest that public opinion supports the practice of charging and punishing drunk drivers for that offense rather than some lesser, non-alcohol related offense.

Another limitation is that **hard data on system case-processing performance were not available in the form needed for rigorous analysis of the effects of no-charge reduction policies or legislation.** Several of the jurisdictions maintain excellent files on individual cases, but have not

aggregated the data in those files across cases. **It is strongly recommended that a follow-up study be performed in at least two or three of the jurisdictions examined in this project to develop and analyze the data in their case files.** The study should trace through the criminal justice system cohorts of drivers arrested before and after the elimination of charge reduction to determine which steps in the process were affected to what degree by the change in charging policy.

5.0 GUIDE FOR ELIMINATING CHARGE REDUCTION IN YOUR JURISDICTION

The principal audience for this report consists of legislators, judges, prosecuting attorneys, and others within criminal-justice systems elsewhere in the nation. Using this report as a guide, those individuals could help decide whether--and how--to eliminate, or at least restrict, charge reduction within their own jurisdictions.

5.1 Strategies for Eliminating Charge Reduction

There are two major strategies for restricting charge reduction: **legislation** and **prosecutorial policies**. The strategies are complementary; efforts directed at one strategy do not necessarily rule out success using the other one.

5.1.1 Legislation. The advantage of attacking charge reduction through legislation is that a uniform statewide policy toward adjudication is made more likely, and individuals within local criminal-justice systems lose their ability to "veto" proposed charge-reduction bans. At the legislative level, there are several options:

- **Prohibiting charge reduction or dismissal of charges** when the evidence (usually a "failing" chemical test result) indicates factual guilt of drunk driving.
- **Requiring disclosure of plea agreements** in the court record and opening the records to public scrutiny.
- **Attaching conditions to dispositions on reduced charges** that ensure: (a) that the reduced disposition and the reason why it was reduced appear on the defendant's driving record; and (b) that a defendant who commits a second offense after the reduction of his or her first charge is treated as a second offender.

5.1.2 Prosecutorial Policies. In some states, it may not be possible to enact legislation prohibiting charge reduction. In the absence of mandatory state legislation, prosecuting attorneys have the option of adopting a charge-reduction policy, such as one of the following:

- **Prohibiting charge reduction**, and forcing individual prosecuting attorneys to try the case, accept a guilty plea to drunk driving, or risk dismissal of the charges for lack

of evidence. It has been argued (for example, by Ventura County's District Attorney) that a ban on plea bargaining also requires the elimination of "overcharging". Thus, it may be necessary to develop guidelines under which charges are not filed in the first place when the case for conviction is weak. A "weak case" is one in which there is a defect that may bar proof of guilt, for example, an improperly administered chemical test or lack of probable cause to arrest the defendant.

- **Restricting entry to existing, legislatively-mandated charge-reduction programs**, such as California's law providing for a "wet" reckless driving conviction, to those first offenders with low blood-alcohol levels, no crash involvement, and no other dangerous behavior (such as high speed or resisting arrest) accompanying the defendant's drunk driving.

Which option is most desirable depends in large part on what is achievable given other alcohol-safety legislation, criminal procedure requirements, and system resources.

5.2 Steps Toward Eliminating Charge Reduction

Mid-America's examination of five jurisdictions in connection with this study suggests that advocates of a no-charge reduction policy should consider taking the following steps:

- **Identify the major obstacles to implementation.**
- **Identify all key actors within the system.**
- **Call a meeting of the key individuals and discuss the proposed charge-reduction restrictions.**
- **Solicit the support of key actors.**
- **Detail the policy to all system personnel.**
- **Publicize the policy.**

5.2.1 Identify the Major Obstacles. Legislators, prosecuting attorneys, and traffic-safety advocates all face the same first step toward implementing a no-charge reduction policy, which is to identify the major obstacles to implementation. **Some of the obstacles to implementation result from existing legislation;** for example, without a "per se" standard of legal intoxication, proof of intoxication is rebuttable and not-guilty verdicts are more likely. **Not all legal barriers to eliminating charge**

reduction are found in drunk-driving and implied-consent statutes. Requirements of jury trial, appointed counsel, and trial de novo--which are found in state constitutions and codes of criminal procedure--may lead to court backlogs if there is a large increase in the number of defendants who contest drunk-driving charges.

Still other obstacles do not result from the laws themselves, but from the structure of the criminal-justice system. A lack of trial judges or prosecuting attorneys, or the lack of funds to support increased prosecution and adjudication caseloads, can create the possibility that system dysfunctions will occur elsewhere.

Many obstacles to implementing a no-charge reduction program can be overcome. The solutions range from enacting new legislation to reorganizing the prosecuting attorney's office and mandating more efficient case-handling practices under local court rules or office policy. The changes made by the Dane County, Wisconsin District Attorney's office illustrate successful procedural and organizational changes: the office established a special team of traffic-prosecution attorneys, and streamlined its handling of pretrial conferences to save prosecuting attorneys' time.

Some obstacles are less susceptible to change, especially if they are supported by politically powerful individuals within the criminal justice system or in other governmental bodies, or if the required legislative or system changes are perceived as too threatening to policymakers. **In general, advocates of a charge-reduction ban should know the nature and strength of any barriers to implementing the ban, carefully analyze those barriers before asking others to support the ban, and honestly describe those barriers to others whose support is needed.**

Assuming there are no significant legal or legal-system constraints that would make a no-charge reduction policy unworkable, **the consequences of adopting such a policy must be identified and considered.** The immediate effects of eliminating charge reduction from drunk driving prosecutions include:

- **More demanding documentation requirements** on the part of police officers, who must treat every arrest as one that could go to trial.
- **Increased trial caseloads,** causing increased workloads for

trial judges and prosecuting attorneys.

- **Increased paperwork**, including case preparation and submission of records to driver-licensing, alcohol-treatment, and correctional agencies.

It is also important to consider the long-term effects of a such policy, which could include:

- **Jail overcrowding**, as offenders accumulate multiple convictions and receive mandatory penalties.
- **Increasingly sophisticated legal challenges**, including technical challenges to alcohol-testing devices and closer scrutiny of the initial stop and arrest for probable cause.
- **Recordkeeping "bottlenecks"** and the possibility that prosecutions could become "lost" within large, overburdened, or poorly-managed systems.
- **Unmanageable probation and treatment caseloads.**
- **Increased costs** of prosecution, courts, corrections, and probation and treatment.
- **Erosion of support** for the charge-reduction restrictions.

The proposed elimination of charge reduction may provoke opposition from within the criminal-justice system, especially from criminal defense attorneys. Thus it is important that those who advocate eliminating charge reduction be able to anticipate and rebut their opponents' arguments. Some of those rebuttal arguments include:

- **Convictions of charges less serious than drunk driving undermine special deterrence** because the offender is not incapacitated and does not receive treatment for his or her underlying alcohol problem.
- **Convictions of lesser charges "hide" previous alcohol-related offenses** and prevent the identification of high-risk offenders.
- **Charge reduction results in disparate punishments** for defendants factually guilty of the same offense.
- **Charge reduction undermines general deterrence** because punishment for drunk driving is not "certain".
- **Public confidence in judges and prosecuting attorneys is reduced** by wholesale charge reduction, especially given

today's public attitude toward drunk drivers.

- If charge reduction occurs, **prosecuting attorneys may compensate by overcharging or by filing charges in weak cases.**
- To the extent it discourages trial, **charge reduction leads to poor case preparation** on the part of police officers and prosecuting attorneys who do not expect cases to go to trial.

5.2.2 Identify Key Actors. After identifying all obstacles to eliminating charge reduction, and estimating the likelihood that those obstacles can be overcome, the next step is to identify all key actors within the system. A "key actor" is a person who can affect the processing of drunk driving cases, or who will, in the performance of his or her job, experience the effects of the elimination of charge reduction. **Key actors include the trial court bench, the chiefs of all law-enforcement agencies that arrest drunk drivers, and those who maintain the jail, as well as probation, evaluation, and treatment workers, and those who maintain court and driver-licensing records.** All of those individuals' work assignments will be affected by legislation or prosecution policies eliminating charge reduction; therefore, steps should be taken as early as possible to eliminate surprise or even hostility that would result from a sudden change in the handling of drunk driving prosecutions, which account for a large percentage of the most trial courts' caseloads.

5.2.3 Call a Meeting of Key Individuals. After the key individuals within the criminal-justice system have been identified, the next step is to call a meeting of the key individuals and discuss the proposed charge-reduction restrictions. If the policy is that of the prosecuting attorney, he or she should call the meeting. **The prosecutor should spell out the details of the policy,** including the criteria under which a drunk driving charge would be filed, the circumstances, if any, under which a guilty plea to a reduced charge would be allowed, and when the policy will go into effect. **The prosecutor should also explain how his or her policy will affect others within the system** (for example, increased attention to detail by arresting officers writing reports) and what assistance the prosecuting attorney's office can provide to others.

If the proposed charge-bargaining restrictions will be implemented by

legislation, the proponents should meet with key legislators, especially those who chair important legislative committees, such as judiciary committees. Proponents also should meet with other individuals within the system, such as key members of judges', prosecuting attorneys', and court administrators' associations, driver-licensing officials, and those who operate health-care agencies that treat convicted offenders. Others with whom advocates should meet include citizen advocates and legislative correspondents for the news media. The major objective of those meetings is to ensure that the proposed charge-reduction restrictions are not widely misunderstood or misinterpreted.

5.2.4 Solicit the Support of Key Actors. After discussing the proposed charge-reduction restrictions, the next step is to solicit the support of the key actors. That may, if feasible, be done at the initial meeting. It is important to determine who is opposed to the policy and, if so, what are the bases for his or her objections. Compromise (for example, delaying the policy's effective date for six months until court records are fully computerized, or accepting, for the time being, an amendment restricting rather than prohibiting the reduction of drunk driving charges) may be wiser than confronting the dissenters or implementing the policy over their objections.

5.2.5 Detail the Policy to All System Actors. Once the policy has been finalized and fully supported, the next step is to detail the policy to all system actors, including, for example, individual police officers, deputy court clerks, intake workers in the probation department, and employees of the driver-licensing agency. **This should be done as far in advance of the effective date as possible,** and explained as clearly as possible, to eliminate confusion and surprise. The prosecuting attorney should designate someone on his or her staff to be available to answer questions and provide more detail on the probable effects of the upcoming policy change.

5.2.6 Publicize the Policy. After informing all who must work within the system under the upcoming restrictions on charge reduction, the next step is to publicize the policy. **A public announcement has the added**

advantage of generating a measure of deterrence, since it publicizes not only the charge-reduction policy itself, but also the fact that drunk drivers are being caught and punished. The announcement should include the effective date of the policy, the reasons for adopting it, and a list of prominent individuals who support it. This step is more important than it may appear, because **in each of the five sites studied in this project, the charge-reduction ban could not have succeeded without public and media support.**

5.3 Effectiveness of No Charge-Reduction Programs

Advocates of a charge-reduction ban will, at some stage of the debate over adopting it, be asked for evidence that such a program is effective. **Effectiveness in reducing traffic-crash losses is difficult to prove through statistical evidence alone**, since most charge-reduction bans occur at the same time as other alcohol-safety legislation and programs; it is difficult to show a causal relationship between the elimination of charge reduction and a reduction in the number of alcohol-related traffic crashes. However, reports from the study sites, especially Fort Smith, indicate that **the elimination of charge reduction has enabled the criminal-justice system to "catch up" with chronic offenders** by ensuring that those offenders actually are convicted of their first drunk driving offense and, if arrested again, convicted of and punished appropriately for the subsequent offense. **Even if offenders are not deterred, they are incapacitated** for increasing periods of time, and their incapacitation can be expected to produce some reduction in their risk of an alcohol-related crash. **Prosecuting and punishing drunk drivers for that offense is also consistent with the public mood** which demands at least retribution. The current trend toward stern treatment of drunk drivers, and the accompanying publicity given it, has probably discouraged some drivers from driving after drinking. Law-enforcement and prosecution staff believe that some social drinkers increasingly have taken steps to avoid driving when intoxicated. It is also believed by a number of those contacted that refusals to reduce drunk driving charges have played a part in deterring would-be drunk drivers.

5.4 Following Up on a Charge-Reduction Ban

Eliminating charge reduction requires a continuing effort after the necessary legislation is passed or the prosecutorial policy announced. Those within the criminal-justice system, especially prosecuting attorneys and judges, must be prepared for the increase in their workloads--as well as the possible criticism--that will follow. Others within the system, such as those responsible for jails, probation departments, and treatment programs, will experience the effects of the charge-reduction ban later on, perhaps after the program has been declared a success and the level of public scrutiny has declined. The public, which presently supports a hard line toward drunk drivers, will in all likelihood be called on to pay the costs of the program in the form of higher taxes to maintain the courts, jails, and law-enforcement agencies. In addition, the news media, which may focus on quick results, may have to be "educated" regarding the less obvious and longer term effects of the elimination of charge reduction.

Overall, a successful charge-reduction policy requires planning on the part of those who wish to implement it, cooperation with those within the criminal-justice system whose work will be affected by it, and communicated to the public and the news media who will be asked to support it. No two jurisdictions are alike, and the process of implementing a no-charge reduction policy will vary from site to site. The five system descriptions in Volume II of this report illustrate some of the jurisdiction-specific problems that may occur, but they by no means describe all possible problems and solutions.

5.5 Summary and Conclusions

In summary, the following can be said about initiating a no-charge reduction program within your jurisdiction:

- The two strategies for restricting charge reduction are legislation and prosecutorial policy, and each strategy offers several options for implementing it.
- A strategy for eliminating charge reduction includes the following steps: identifying the major obstacles to implementation; identifying all key actors within the system; calling a meeting of the key individuals and discussing the proposed charge-reduction policy; soliciting the support of key actors; detailing the policy to all system personnel; and publicizing the policy.

- Although it is difficult to prove the highway-safety effectiveness of a charge-reduction ban through statistical evidence alone, likely beneficial effects **related to** highway safety include special deterrence of multiple offenders, incapacitation of offenders, and public approval of the way the criminal-justice system deals with drunk drivers.
- Once a no-charge reduction program goes into effect, it is necessary for those who implement it to follow up by maintaining their commitment to it.

APPENDIX A
PERSONS CONTACTED* IN CONNECTION WITH THIS STUDY

NHTSA Contacts

Michael Baldwin, Alcohol Coordinator, Region X, Seattle,
Washington
Jim Downey, Alcohol Coordinator, Region V, Chicago Heights,
Illinois
Don Heene, Alcohol Coordinator, Region III, Baltimore,
Maryland
Tom Louizou, Alcohol Coordinator, Region II, White Plains,
New York
Craig Miller, Alcohol Specialist, Region IX, San Francisco,
California
Clinton V. Rice, Alcohol Coordinator, Region IV, Atlanta,
Georgia
James Ryan, Alcohol Specialist, Region I, Cambridge,
Massachusetts
James Stevens, Alcohol Coordinator, Region VII, Kansas City,
Missouri
Roland Wilson, Alcohol Coordinator, Region III, Baltimore,
Maryland
Vern With, Alcohol Coordinator, Region VI, Fort Worth,
Texas
Michael Witter, Alcohol Coordinator, Region VIII, Littleton,
Colorado

State and Local Level Contacts

Frank Blomgren, Michigan Department of State
Michael D. Bradbury, District Attorney, County of Ventura
Charles Brewer, City Prosecutor, Jackson, Mississippi (by
letter)
Gary Brounker, Office of Highway Safety, Commonwealth of
Kentucky
Gary Bucchino, Prosecuting Attorney, Omaha, Nebraska
Vincent Burgess, Virginia Transportation Safety Office
R. Steven Coleman, Governor's Office of Criminal Justice
Planning, State of Mississippi
James Cope, Assistant County Attorney, Salt Lake County,
Utah
Charles Cortez, Alcohol Programs Coordinator, New Mexico
Traffic Safety Bureau
B. J. Daley, Project Director, Baton Rouge Target of
Opportunity Program
Paul J. Delcambre, Jr., City Prosecutor, Biloxi, Mississippi
(by letter)
Mary Lynne Evans, Traffic Safety Coordinator, State of
Nevada
James Filyaw, Assistant City Attorney (Prosecution), Fort
Smith, Arkansas
Fred Foreman, State's Attorney, Lake County, Illinois
Frank Franciscone, Connecticut Department of Transportation

Eddie R. Gaines, City Prosecutor, Gulfport, Mississippi (by letter)

Gary Gerbitz, State District Attorney, 11th Judicial District, Chattanooga, Tennessee

Howard Graf, New Mexico Traffic Safety Bureau

Herman Goldstein, Professor of Law, University of Wisconsin

Edwin C. Guy, Director, Governor's Highway Safety Program, State of North Carolina

Jerry Hancock, Staff Attorney, Wisconsin Office of Highway Safety

David C. Hartwig, Assistant Prosecuting Attorney, Ingham County, Michigan

William Hayes, New Jersey Office of Highway Safety

Julian Hickman, State of Virginia

Jeffrey Hollingsworth, Assistant State District Attorney, 11th Judicial District, Chattanooga, Tennessee

James Horton, Director of Development, Western Arkansas Counseling and Guidance Center, Fort Smith, Arkansas

Robert Keaton, Virginia Alcohol Safety Action Project

E. Lawson King, County Attorney, Fayette County, Kentucky (by letter)

Michael Kumm, South Dakota Department of Public Safety

Dennis Labelle, Assistant Prosecuting Attorney, Grand Traverse County, Michigan

John Lacey, Director of Alcohol Programs, University of North Carolina, Highway Traffic Safety Center

Steven Levine, Office of the General Counsel, Wisconsin Department of Transportation

Philip Madrano, Metropolitan Court Division, Bernalillo County, New Mexico District Attorney's Office

Tom Massimino, Assistant State's Attorney, State of Connecticut

John McDuffee, Governor's Highway Safety Representative, State of New Hampshire

John McKay, Alcohol Programs Manager, Texas Department of Highways and Public Transportation

Emily McKenzie, Alcohol Safety Action Project, Anchorage, Alaska

Todd Meurer, Court Commissioner, Dane County Circuit Court (at the time of the initial contact, he was an Assistant Dane County District Attorney)

Robert Muh, Attorney General's Office, State of New Hampshire

Commander Joe Ann O'Hara, Highway Safety Coordinator, State of Kentucky

Vincent O'Neill, Deputy District Attorney, County of Ventura

Peter O'Rourke, Governor's Highway Safety Representative, State of California (by letter)

Tom V. Parker, Director, Arkansas Highway Safety Program

Deborah M. Plog, Michigan Judicial Institute

Lou Rader, Pennsylvania Bureau of Safety Programming and Analysis

Peggy Ramage, Project Director, Chattanooga Target of Opportunity Program

Tony Randall, Michigan Drunk Driving Task Force

Rob Reese, County Attorney's Office, Salt Lake County, Utah
June Ross, Alcohol Program Coordinator, Oregon Traffic
Safety Commission
Richard Serino, Governor's Highway Safety Representative's
Office, State of Arizona
Steven Schiff, District Attorney, Bernalillo County, New
Mexico (by letter)
James Shonkweiler, Staff Coordinator, Michigan Prosecuting
Attorneys Association
Milton R. ("Mickey") Skyring, Clerk/Judicial Administrator,
Baton Rouge City Court
Dick Smith, Stop DWI Program, State of New York
Barbara Spencer, State of Mississippi
Dann Stuart, Governor's Office of Highway Safety, State of
North Dakota
William Sykes, Assistant Prosecuting Attorney, Kalamazoo
County, Michigan
G. Van Oldenbeek, Assistant Director, California Office of
Traffic Safety
Georgia Waskovich-Swearingen, Arkansas Highway Safety
Program
Sandra Whitmire, Highway Safety Coordinator, State of
Florida
Jack Yelverton, National District Attorneys Association,
Arlington, Virginia

* This list includes individuals contacted before the final
selection of sites and therefore does not include those contacted
for the first time during a site visit.

APPENDIX B
SITES CONSIDERED FOR SELECTION

Note: Sites marked with a single asterisk were "recommended", and those marked with a double asterisk were "highly recommended" for further contact, in Mid-America's report, "Recommendation of Candidate Sites". All of the "highly recommended" sites, plus Chattanooga, Tennessee, made up the nine sites recommended by NHTSA for further study. The five jurisdictions finally selected for site visits appear in bold face.

Anchorage, Alaska*
Baton Rouge, Louisiana**
Benton County, Oregon
Bernalillo County (Albuquerque), New Mexico**
Biloxi/Gulfport, Mississippi**
Black Hawk County (Waterloo), Iowa*
Chattanooga, Tennessee
Dane County (Madison), Wisconsin**
Davis County, Utah*
DeKalb County, Georgia*

El Paso County, Texas*
Fayette County (Lexington), Kentucky**
Flagstaff, Arizona
Grand Traverse County, Michigan
Henrico County, Virginia*
Ingham County, Michigan
Jackson, Mississippi**
Kalamazoo County, Michigan
Kenton County, Kentucky
King County (Seattle), Washington*

Lane County, Oregon
Lake County, Illinois*
Marion County, Oregon
Middlesex County, New Jersey
Minnehaha County, South Dakota
Napa County, California*
New Haven, Connecticut
Omaha, Nebraska*
Prescott, Arizona
Pittsylvania County, Virginia

Sebastian County (Fort Smith), Arkansas**
Salt Lake County, Utah
San Luis Obispo County, California*
Solano County, California*
Tempe, Arizona*
Travis County (Austin), Texas*
Tucson, Arizona*
Tulare County, California*
Ventura County, California**
Washington County, Oregon*

APPENDIX C
DISCUSSION GUIDE FOR SITE VISITS

**DWI CHARGE REDUCTION PROJECT
QUESTIONS TO BE ASKED DURING SITE VISITS**

Part 1--General Information

What is the name of the jurisdiction?

What is its population and area?

Is the jurisdiction the state capital, county seat, the home of a major industry or state university, or the like?

What are the major television stations, radio stations, and newspapers serving the jurisdiction?

Does the jurisdiction border any jurisdictions with different liquor laws and thus experience the phenomenon of "border crossing"?

Does the jurisdiction have any unusual traffic patterns, such as seasonal tourism or a high volume of through traffic?

Are any data readily available with respect to the following:

- Income?
- Type of employment? Extent of unemployment?
- Level of education?
- Etc.?

Part 2--Legal Environment With Respect to Drunk Driving

Are the state's drinking driving laws strict, moderately strict, or moderately lenient, relative to those of other states?

Are the state's drinking driving laws much stricter than, somewhat stricter than, or about the same as they were in 1980?

What major changes, aside from any limitations on charge reduction, has the legislature made to the state's drinking driving laws since 1980?

Has the state legislature enacted any of the following since 1980?

- An increase in the legal drinking age?
- Restrictions on "happy hours" and similar promotions?
- A system of administrative adjudication for those who fail or refuse to take chemical tests?
- Mandatory confinement to jail for first offense drunk driving?
- A mandatory "hard" suspension for first offense drunk driving?
- Mandatory alcohol evaluation, community service, or victim restitution for convicted drunk drivers?

- A .10 (or lower) per se standard of intoxication?
- Legislation authorizing prearrest breath testing?
- Legislation specifically authorizing roadblocks to detect drinking drivers?

(For any of the above measures that have been enacted since 1980, give the effective date and the nature of the change.)

In the jurisdiction, what police agencies are responsible for enforcing drinking driving laws?

For each police agency:

- How many sworn officers does it have?
- How many officers work in its traffic department?
- What is its budget?

Is first offense drunk driving a state law offense, a municipal law offense, or both?

Is the Uniform Traffic Ticket used in citing those charged with drunk driving?

In the jurisdiction, what prosecuting agencies are responsible for prosecuting drunk driving charges?

For each prosecuting agency:

- How many attorneys does it have?
- How many attorneys work in its misdemeanor division (or traffic division)?
- What is its budget?

Is the prosecuting attorney elected or appointed? If elected, what is the length of his or her term?

Is the state court system unified, or partly unified?

Are trial court judges elected or appointed? If elected, what is the length of their terms?

When a defendant is charged with first offense drunk driving, in what court is that charge tried?

- Is that court a court of general or limited jurisdiction?
- Is that court a court of record?
- Is jury trial available in that court?
- To what court can a guilty verdict be appealed?

For that trial court:

- How many judges sit on that court?
- What is its budget?

Part 3--Prohibitions on Charge Reduction

What is the jurisdiction's official policy on charge reduction in drunk driving cases?

When did the jurisdiction--for whatever reason--first restrict charge reduction?

Did the initial decision to limit charge reduction result from:

- State legislation restricting charge reduction?
- A new prosecuting attorney taking office?
- A new judge taking office?
- Change in policy by a prosecuting attorney during his or her term?

Were the restrictions on charge bargaining in drunk driving cases part of a larger effort to limit charge reduction in criminal cases in general?

Was the major reason for restricting charge reduction in drunk driving cases:

- Compliance with state legislation?
- The prosecuting attorney's own policy toward plea bargaining in general?
- The prosecuting attorney's own policy toward drunk driving in particular?

Did someone outside the prosecuting attorney's office, such as a drunk driving task force, a group of citizen activists, or the local news media, wage a campaign to restrict charge bargaining?

Who were the key individuals, if any, who worked to institute restrictions on charge bargaining?

When restrictions on charge reduction in drunk driving cases were first proposed, were any objections raised by those in the jurisdiction? If so, who objected?

Was the basis of the objections:

- That restricting charge bargaining was not fair?
- That it would place an undue strain on the justice system?
- That it was unenforceable or unworkable?
- That it endangered existing programs, such as earned charge reduction or deferred sentencing?

How much lead time elapsed from the time the charge-bargaining restrictions were announced and they went into effect?

Did other members of the justice system, such as trial court judges, police officials, and probation office personnel, participate in the decision to restrict charge reduction? If

they did not participate per se, were they advised of the coming change in policy?

What problems, if any, occurred within the justice system after the charge-reduction restrictions went into effect? Specifically:

- Was there an increase in the number of drunk driving cases that went to trial?
- Was there an increase in the number of requests for jury trials, requests for continuances, and appeals?
- Did backlogs or delays develop with respect to trying drunk driving cases?
- Did it become necessary to hire additional staff or pay additional overtime to existing staff?
- Did the conviction rate for drunk driving fall, and by how much?
- Did courts frustrate the policy by continuing, on their own initiative, to divert convicted offenders or suspend their sentences?
- Were any problems experienced with respect to handling "special cases", for example, granting less culpable offenders leniency in exchange for their cooperation in helping prosecute other, more culpable parties?

Is there any evidence that the charge-reduction restrictions themselves, the publicity surrounding those restrictions, or both, had an impact on:

- Recidivism among convicted drunk drivers?
- Alcohol-related fatalities, injuries, and accidents?

What was the initial public and media response to the charge-reduction policy? Has that response changed since then?

Since the original restrictions on charge bargaining went into effect, have any further changes been made to those restrictions?

Is it likely that the charge-reduction policy will be modified during in the next year? If so, will those modifications be the result of:

- Newly enacted legislation?
- Changes in personnel within the justice system?
- Citizen or media activism?
- Problems in the justice system resulting from the current policy?

Part 4--Quality and Availability of Data

Since the charge-reduction restrictions went into effect, has any organized anti-drunk driving effort (such as the Target of Opportunity program) operated within the jurisdiction?

For each of those programs:

- What was its name?
- When did it operate?
- Who was the project director or coordinator?
- Who provided the funding?
- Toward what personnel or activities were program funds devoted?
- Who evaluated the program, and what attributes of the program (for example, reduction in nighttime fatalities) were evaluated?
- Were interim and final reports prepared, and are they available?

Aside from organized projects, has the jurisdiction been the site for any governmentally- or privately-sponsored studies?

For each of those studies:

- Who performed it?
- Who sponsored it?
- What attributes (for example, reduction in nighttime fatalities) did it evaluate?
- When did it operate?
- Who was the project director or coordinator?
- Were interim and final reports prepared, and are they available?

Can data on system activity and the impact of charge-reduction restrictions be obtained:

- From the prosecuting attorney's office?
- From the trial court?
- From the state court administrator?
- Through statewide driver-licensing records?
- Through statewide accident data?
- From law-enforcement agencies?

Does any governmental agency in the jurisdiction, or does any state agency, maintain a computerized system that "tracks" individual drunk driving cases?

Part 5--Effects of the Charge-Reduction Policy

Prosecuting Attorney:

Did the charge-reduction policy have the effects its sponsors expected?

Is the policy being applied consistently within the jurisdiction?

Has the policy made prosecuting drunk driving cases more difficult (for example, by increasing the number of not-guilty pleas and trials, or increasing the amount of time spent

preparing cases)?

Has the policy made prosecuting drunk driving cases easier (for example, by dissuading defense counsel from threatening to try cases, or making pretrial negotiations easier)? Has it provided a needed "excuse" not to plea bargain?

Has the policy made necessary an increase in the number of prosecuting attorneys or the agency's budget?

Have other law changes, such as more severe penalties for test refusal, administrative license removal, or a per se standard of intoxication, made the charge-reduction policy more feasible?

Did the policy receive publicity in the local media? Has the jurisdiction earned a reputation for taking an unusually hard line with respect to drunk driving prosecution?

If the charge-reduction policy was mandated by law, did some prosecuting attorneys consider it too much of a restriction on prosecutorial discretion?

Is there any way in which others within the system can defeat the charge-reduction policy?

Judge:

Has the charge-reduction policy produced a change in:

- The number of drunk driving cases? The elapsed time from arrest to trial?
- The amount of paperwork required to process a drunk driving case?
- The number of not-guilty pleas, trials, and jury trials?

Did the changes that followed institution of the policy eventually correct themselves, or were they more permanent?

Has the policy made necessary an increase in the number of judges or in the court's budget?

Do the judges consider the charge-reduction policy a positive step with respect to drunk driving adjudication?

Did some judges consider the charge-reduction policy, and other drinking driving legislation (such as mandatory sentences), too much of a restriction on judicial discretion?

Did the charge-reduction policy result in a change in judges' sentencing patterns?

Do the judges consider current drunk driving sanctions too strict, too lenient, or appropriate?

Compared to other law changes, how effective has the charge-

reduction policy been in reducing drunk driving?

Compared to other influences, such as changes in liquor laws or new police enforcement techniques, how much of an effect has the charge-reduction policy had in reducing drunk driving?

Were the judges consulted before the charge-reduction policy went into effect?

Are any programs or practices--such as earned charge reduction--used by trial judges to circumvent the charge-reduction policy?

Court Clerk or Administrator:

Has the charge-reduction policy caused a change in the amount of paperwork associated with drunk driving cases?

Has the policy created any problems with respect to interacting with state recordkeeping systems (such as driver-licensing and criminal-justice agency computers)?

Has the policy made necessary an increase in the number of personnel or in the court's budget?

Do conviction records "get lost in the system"? Has the severity of that problem changed in the wake of the charge-reduction policy?

Is there a problem with "no-shows"? If so, has the no-show problem become worse in light of the charge-reduction policy? If there are no-shows, when are defendants most likely not to appear?

Were the court clerk and administrator consulted before the charge-reduction policy went into effect?

Law-Enforcement Official:

What is the officers' reaction to the charge-reduction policy? Has the policy resulted in a change in the number of arrests made?

Has the policy made necessary an increase in the officers or in the department's budget?

Has the policy changed the amount of time officers must spend in court? Have other factors, such as the adoption of a per se standard of intoxication or a change in the number of test refusals, affected the amount of time that must be spent in court?

Have officers begun to use new enforcement tactics, such as selective enforcement, roadblocks, training in visual cues, or prearrest testing?

Were law-enforcement officials consulted before the charge-reduction policy went into effect?

Corrections Personnel:

How many convicted drunk drivers are sent to jail each month? Did the charge-bargaining policy affect the number of persons jailed?

Has the policy made necessary an increase in the number of corrections personnel or in the corrections budget?

Has there been an overcrowding problem in the jail, or a delay in confining persons sentenced to serve time on weekends? Is either due, in whole or in part, to the adoption of the charge-bargaining policy?

If an overcrowding problem exists, has an early-release program been used to relieve it? If so, what criteria have been developed for early release?

Since the charge-reduction policy went into effect, has there been a change in the "type" of drunk driving offender sentenced to jail?

Have any other factors, such as laws or regulations requiring those arrested for drunk driving to be detained in jail for a given period, affected the operation of the jail?

Were corrections officials consulted before the charge-reduction policy went into effect?

Probation, Treatment, and Postconviction Screening Personnel:

Has the charge-reduction policy caused a change in probation, treatment, or screening techniques?

Has the charge-reduction policy affected the size of the drunk driving caseload? Has it resulted in a change in the "type" of person convicted of drunk driving?

Has the policy made necessary an increase in the number of personnel or in the agency's budget?

Has there been a change in the number or proportion of multiple offenders? To what extent has that change been a result of the charge-reduction policy?

Have changes in the duties of probation personnel have resulted from the charge-reduction policy? Has there been a change, for example, in the amount of paperwork or the closeness of supervision by others?

Were probation and treatment personnel consulted before the charge-reduction policy went into effect?

Defense Attorney:

Has the charge-reduction policy affected defendants' decisions whether to retain private counsel? Are defendants less likely to retain an attorney because it is considered futile to contest a charge? Or are they more likely to retain an attorney because of the added consequences of an arrest and conviction?

Have other laws, such as administrative license removal or per se standard of intoxication, affected defendants' decisions whether to retain counsel?

To what extent has the charge-reduction policy affected a defendant's need for counsel? To what extent have other drunk driving law changes done so?

Have members of the defense bar begun to rely on new legal theories such as scientific attacks on testing equipment? Have those theories been successful at trial?

In light of the charge-reduction policy, have defense counsel adopted different strategies, such as encouraging defendants to enter treatment programs as soon after arrest as possible?

Did the organized bar or prominent local defense attorneys object to, or negotiate with other system personnel regarding, the charge-reduction policy?

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