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Alfred Blumstein, Chairman

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## THE EFFORT TO REDUCE DRUNKEN DRIVING IN PENNSYLVANIA: THE EFFECTS ON THE CRIMINAL JUSTICE SYSTEM AND HIGHWAY SAFETY

The Justice Analyst series is designed to summarize the results of policy analysis in the areas of criminal and juvenile justice for the benefit of state and local policymakers and the general public. The current issue focuses on Pennsylvania's effort to reduce drunken driving.

The report employs data available from several state agencies to develop an overview of the changes that have occurred as a result of Act 289 of 1982. The principal analyst for the study was Douglas Hoffman of our Bureau of Statistics and Policy Research. The Bureau's Director, Phillip J. Renninger assisted in the preparation of the report.

We are most interested in knowing your reactions to this report and would be pleased to answer any questions. You may write us at P.O. Box 1167 Federal Square Station, Harrisburg, PA 17108-1167.

James Thomas  
Executive Director

### INTRODUCTION

In December of 1982 the Pennsylvania General Assembly passed Act 289, a new law which is the principal thrust of Pennsylvania's fight against drunken driving. The stated<sup>1</sup> intent of Act 289 is to increase highway safety by deterring people from driving under the influence (DUI), by making it easier for police to make an arrest, and by increasing the likelihood that an offender will be punished and provided treatment once arrested.

As Table 1 indicates, DUI defendants face increased penalties and the imposition of mandatory attendance at safety school under Act 289. Offenders who are convicted or who accept ARD (Accelerated Rehabilitation Disposition) may also be required to pay court costs, restitution, and educational or treatment expenses.

<sup>1</sup>Governor's DUI Task Force Report, PA Department of Transportation, October 1982.

TABLE 1: CHANGES IN PENALTIES AND REQUIREMENTS FOR DUI OFFENDERS		
	OLD LAW	ACT 289
<b>CONVICTED OFFENDERS</b>		
FINES	\$0 to \$2,500	\$300 to \$5,000
JAIL	None to 1 year	1st offense = 2 days-2years 2nd offense = 30 days-2years 3rd offense = 90 days-2years Subsequent offense = 1-2 years
LICENSE SUSPENSION	1st offense = 6 months 2nd offense = 1 year	One year
PROBATION	Permissible	Ineligible
<b>ACCELERATED REHABILITATION DISPOSITION</b>		
ARD	Permissible, no license suspension required	Permissible for first offenders in most cases, 1 month to 1 year license suspension required
<b>ALL OFFENDERS</b>		
EVALUATION/ EDUCATION	Not required	All offenders must be evaluated and attend Alcohol Highway Safety School

This report is aimed at 1) determining the criminal justice system's reaction to Act 289 and the associated workloads the Act has imposed; 2) examining changes in highway safety; and 3) providing information on DUI offenders to help understand the extent to which Act 289 has served as an effective deterrent to drunken driving.

## THE CRIMINAL JUSTICE SYSTEM RESPONSE

The enactment of Act 289 was accompanied by efforts to increase education and public information on the dangers of drinking and driving. However, the major burden, from arresting to incarcerating DUI offenders, has fallen on the criminal justice system. This section examines how Act 289 induced changes in arrests, court dispositions, and sanctions imposed on DUI offenders.

### ARREST TRENDS: Figure 1

Several changes made under Act 289 were intended to facilitate DUI arrests. These changes included expanding the use of chemical testing, widening police authority to stop suspected offenders, and making driving with a Blood Alcohol Content (BAC) of .10% or more a per se violation.

These actions plus heightened law enforcement awareness of the problem were expected to increase arrests. As Figure 1 shows, DUI arrests began to rise prior to the enactment of the new law, and (aside from a slight dip in 1985) have continued to grow. From 1981 to 1987, DUI arrests in Pennsylvania rose 68%.

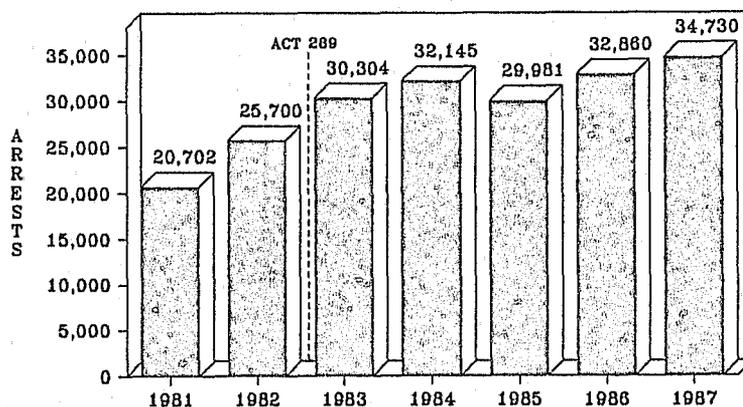
### COURT CASELOADS: Figure 2

As a result of Act 289, court caseloads have also increased. As

Figure 2 shows, there was a dramatic increase in DUI case dispositions from 1982 to 1983. A slight increase followed in 1984 and dispositions decreased in 1985 and 1986. This decrease in cases disposed was probably in part due to the decrease in arrests in 1985, but there is another factor which could contribute to this decline. Act 289 upgraded the criminal classification of DUI and prohibited the modification or reduction of a DUI charge at the preliminary hearing. Because of these

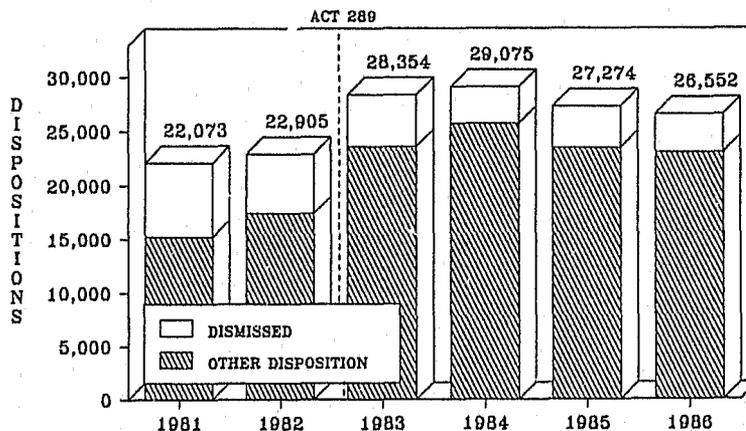
actions a District Justice can no longer dispose of a DUI charge except to dismiss it for cause. Any disposition other than a dismissal requires action by the Court of Common Pleas. The resultant increase in demand on the resources of the Court of Common Pleas could have saturated the court and caused a backlog of DUI cases. A case backlog would lengthen the time needed to dispose of a case and therefore could reduce the number of cases the court is able to dispose of during the year.

FIGURE 1: DUI ARRESTS IN PENNSYLVANIA  
1981-1987



PRODUCED BY: PCCD Bureau of Statistics  
& Policy Research  
DATA SOURCE: PA State Police

FIGURE 2: DUI COURT DISPOSITIONS  
(Includes ARD Cases)  
1981-1986



PRODUCED BY: PCCD Bureau of Statistics  
& Policy Research  
DATA SOURCE: Court Dockets

## DUI TRIALS

The number of DUI trials increased 71% from 1981 to 1984. However, the fact that two-thirds of jury trials and three-quarters of bench trials now end in conviction appears to be causing most defendants to avoid a trial and accept ARD or enter a guilty plea. In 1986, there were 859 trials, a 31% decrease from 1984, and a net increase of only 18% from 1981. Since case dispositions increased 20% from 1981 to 1986, the percent of defendants going to trial actually decreased from 1981 to 1986.

TABLE 2: DUI TRIALS HELD FROM 1981 TO 1986

	1981	1982	1983	1984	1985	1986
TRIALS HELD	730	951	1,044	1,251	1,059	859
PERCENT CHANGE FROM 1981	--	+30%	+43%	+71%	+45%	+18%

### COURT ACTIONS: Figure 3

In 1981, 66% of the people charged with DUI were found guilty or accepted ARD compared to 85% in 1986. The ARD pretrial diversion program is

available only to first-time DUI offenders who are not involved in an accident which causes serious injury or who are not charged with other serious offenses. The program is offered to eligible defendants before a plea is entered or a trial has begun. Since accepting ARD allows a defendant to avoid jail, ARD usage increased markedly following the passage of Act 289. Correspondingly, the percentage of defendants found not guilty or dismissed, and the percentage found guilty and not jailed, have decreased.

In 1981, a defendant found guilty of DUI was most likely placed on probation (59%) or assessed fines and costs (27%) and given a license suspension of at least 6 months (GLTY/NO JAIL group in Figure 3). Since the enactment of Act 289, the consequences of entering an ARD program (e.g., required safety school attendance, supervision, license suspension, and payment of costs and restitution) are in most cases, more severe than the imposition of probation or fines and costs under the old law. In 1981, only 12.5% of convicted DUI offenders, or 4.3% of all DUI defendants processed received a jail sentence. By comparison, in 1986, 97.1% of convicted DUI offenders and 26.5% of all DUI defendants processed were sentenced to jail. The new ARD requirements and mandatory sentences established by Act 289 have resulted in an increase in the number and percentage of offenders punished and the severity of that punishment.

FIGURE 3: DISPOSITION OF DUI DEFENDANTS 1981 TO 1986

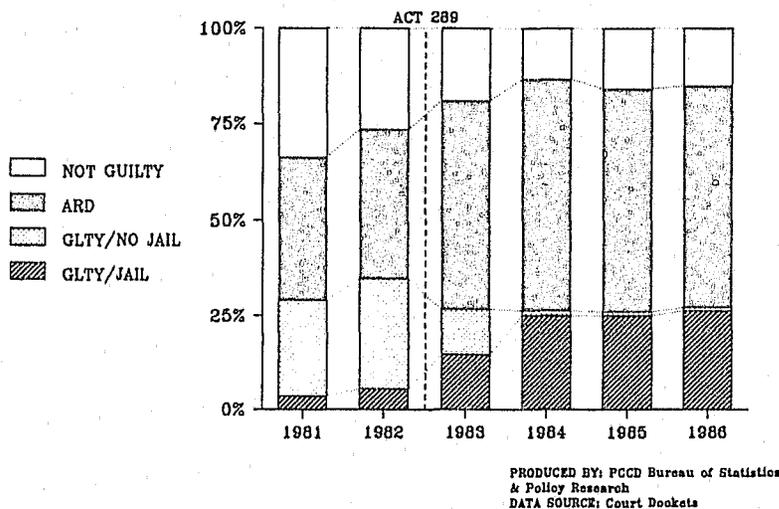
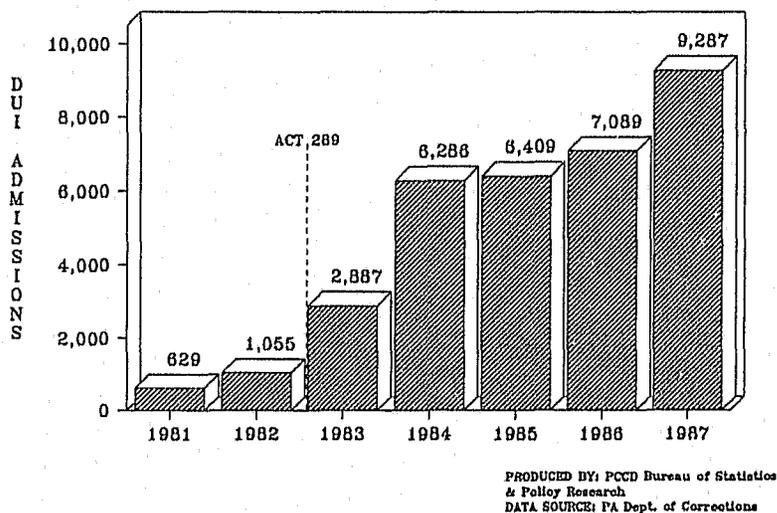


FIGURE 4: SENTENCED DUI ADMISSIONS TO COUNTY JAILS 1981-1987



### JAIL ADMISSIONS: Figure 4

Increasing arrests plus the increased probability of incarceration have combined to increase DUI jail admissions over 1300% since 1981 (Figure 4). While the large increases experienced in 1983 and 1984 can be

directly attributed to the implementation of Act 289, the reason for the major increase seen in 1987 is less clear. One possible explanation is that in 1987, a higher percentage of offenders were repeat offenders and were not eligible for ARD, and instead received mandatory jail sentences. However, the distribution of sentences received by DUI offenders has remained fairly constant since 1983, indicating that first offenders are as responsible as repeat offenders for the increase in jail admissions.

DUI admissions now account for 40% of all sentenced admissions to county jails. But due to the relatively short time served, (an average of 27 days compared to 139 days for all other offenders) DUI offenders represent less of the jail Average Daily Population (ADP) than admissions. In 1987 they accounted for over 11% of sentenced jail ADP and over 5% of total jail ADP. In 1981 they represented only 3% of sentenced, and 1% of total jail ADP.

**PROBATION DEPARTMENT CASELOADS: Figure 5**

Figure 5 shows a sharp increase in supervision sentences for DUI offenders following the enactment of Act 289. Though the number of offenders sentenced directly to supervision declined about 15% from 1983 to 1986, the net increase from 1981 to 1986 was 73%. The decrease from 1983 to 1986 is probably due to two factors, the number of cases processed by the courts decreased and the percentage of offenders going directly to jail increased. The majority of those jailed however, are also supervised after release. As of December 1987, DUI offenders accounted for 33% of active probation department caseloads statewide.

**ALCOHOL HIGHWAY SAFETY PROGRAM: Figure 6**

All DUI offenders receiving ARD or found guilty are to be evaluated and must attend safety school. Many

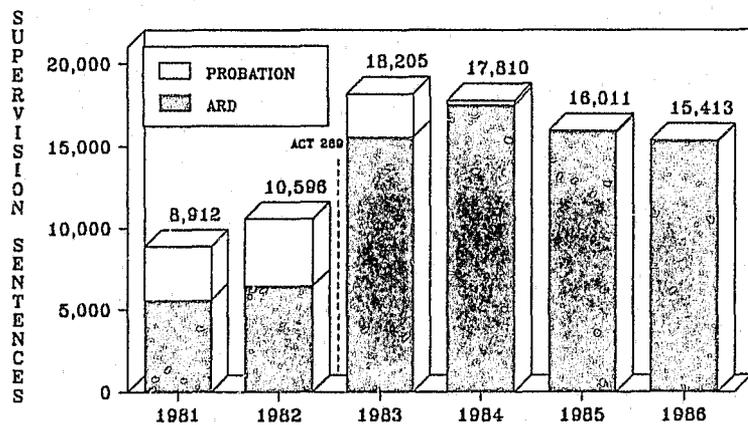
defendants eventually found not guilty are also evaluated prior to their final court disposition. The evaluation and education functions are combined in the Alcohol Highway Safety Program. As Figure 6 indicates, participation in this program has increased dramatically since 1981.

**HIGHWAY SAFETY**

The criminal justice system has reacted to Act 289 as anticipated

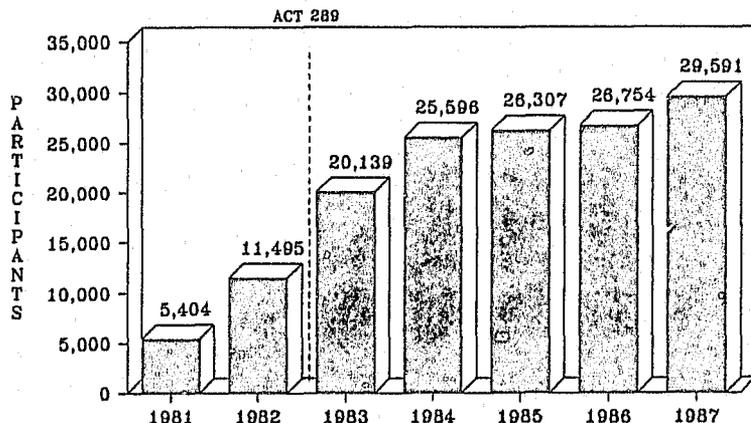
by increasing arrests, by requiring more offenders to undergo punishment and education, and by increasing the severity of that punishment. Given that the criminal justice system has met those goals which were intended to deter people from drinking and driving, we would expect an improvement in highway safety if deterrence is working. The next step is to examine the available measures of alcohol highway safety to determine what changes have occurred.

**FIGURE 5: DUI OFFENDERS RECEIVING ARD OR PROBATION 1981-1986**



PRODUCED BY: PCCD Bureau of Statistics & Policy Research  
DATA SOURCE: Court Dockets

**FIGURE 6: ALCOHOL HIGHWAY SAFETY PROGRAM PARTICIPANTS 1981 TO 1987**



PRODUCED BY: PCCD Bureau of Statistics & Policy Research  
DATA SOURCE: PA Dept. of Transportation

**ALCOHOL-RELATED ACCIDENTS: Figure 7**

From 1980 to 1987 the net increase in alcohol-related accidents was 26%, from 16,950 in 1980 to 21,406 in 1987. The exceptions to this trend were a 3.6% decrease in 1983, the year Act 289 became law, a 1.7% decrease in 1985, and a .6% decrease in 1987. Generally, total alcohol-related accidents are not considered the best indicator of

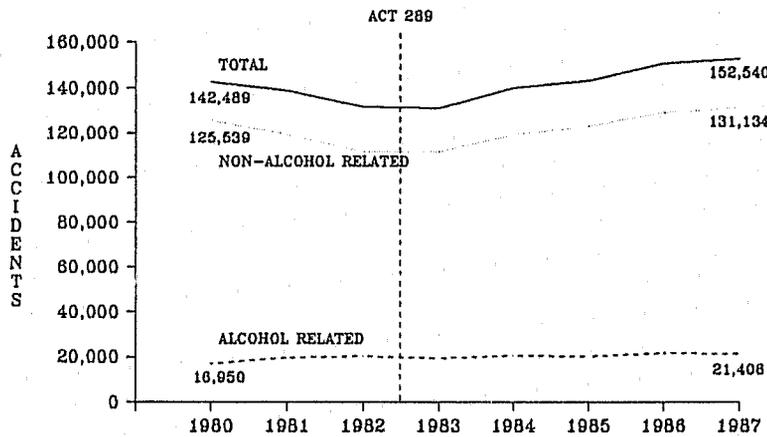
alcohol involvement in accidents. This is because they account for only about 15% of all accidents and the indication of alcohol use in minor accidents can be rather subjective. Alcohol involvement is determined by the investigating officer's observations, and the level of investigation can vary widely depending on the severity of the accident or any of several other factors. In contrast, alcohol is involved in about 40% of fatal accidents and the level of

investigation is much higher, including alcohol testing required under Act 289.

**ALCOHOL-RELATED FATAL ACCIDENTS: Figure 8**

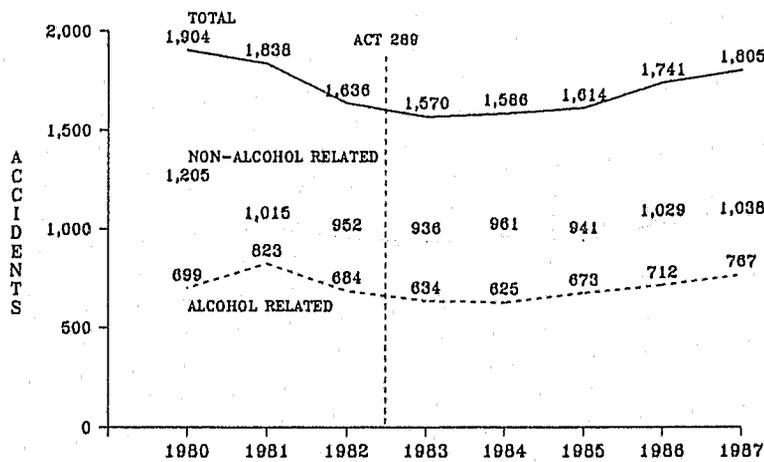
As mentioned, alcohol plays a larger role in fatal accidents compared to non-fatal accidents, and therefore fatal accidents are considered a better indicator of alcohol involvement in highway safety. As Figure 8 shows, alcohol-related fatal accidents peaked in 1981 at 823 and decreased 17% in 1982, the year Act 289 was considered and passed by the Legislature. An additional 7% decrease occurred in 1983 the year Act 289 became law, and a slight (1%) decrease followed in 1984. Since 1984, alcohol-related fatal accidents have increased steadily at an average rate of 7.1% a year. During the same period (1984-1987), non-alcohol-related fatal accidents rose an average of only 2.7% a year.

**FIGURE 7: AUTO ACCIDENTS REPORTED 1980-1987**



PRODUCED BY: PCCD Bureau of Statistics & Policy Research  
DATA SOURCE: PA Dept. of Transportation

**FIGURE 8: FATAL AUTO ACCIDENTS REPORTED 1980-1987**



PRODUCED BY: PCCD Bureau of Statistics & Policy Research  
DATA SOURCE: PA Dept. of Transportation

**FATALLY INJURED DRIVERS**

Another indicator of drinking and driving is the percent of fatally injured drivers who have a Blood Alcohol Content(BAC) of .10% or more. Though the percentage of those fatally injured and tested who are legally drunk has been somewhat lower since Act 289 was passed, the number of drunk drivers killed has remained rather constant. As Table 3 shows the number of drunk drivers killed peaked in 1987 at 409, and the fewest killed was 314 in 1984. The real difference has been the increase in testing of fatally injured drivers, up 27% from 1980 to 1987. Act 289 made this testing mandatory. Since 1982, the percentage of these drivers above the legal limit has not been consistent enough to reveal any trend or change though it has never returned to the 1981 level of 52.5%.

TABLE 3: PERCENT OF FATALLY INJURED DRIVERS WHO ARE LEGALLY DRUNK - BAC OF .10% PLUS

	1980	1981	1982	1983	1984	1985	1986	1987
# Tested	755	670	851	885	821	771	785	958
# Above .10%	360	352	360	375	314	342	360	409
% Above .10%	47.7	52.5	42.3	42.4	38.3	44.4	45.9	42.7

**THE OFFENDER**

While the criminal justice system response to Act 289 is rather straightforward and well documented by established record keeping systems, the changes in highway safety are less clear. Had Act 289 resulted in a dramatic and sustained decrease in alcohol-related accidents it would be easy to conclude that it did deter drunken driving. However, the strongest indicator (alcohol-related fatal accidents) of highway safety improvement shows the largest decrease in these accidents occurring prior to Act 289 becoming law and smaller decreases occurring immediately following enactment. Since that time we have witnessed a steady increase in alcohol-related fatal accidents.

Pennsylvania is not the first jurisdiction to implement a program aimed at deterring drunk drivers, nor is it the first to experience some initial improvement in highway safety only to find alcohol-related fatal accidents rising after the initial impact<sup>2</sup>.

To get a better understanding of the extent of Act 289's impact on highway safety it is necessary to look closer at the offenders involved.

**THE DRIVER IN ALCOHOL-RELATED FATAL ACCIDENTS**

Since alcohol-related fatal accidents provide the only measure that shows a definitive change in alcohol highway safety, understanding who these offenders are, and how they compare to DUI offenders in general is necessary to understand how deterrence can or should work. The deterrent effect of the law can take two forms: 1) deterring would-be

offenders by posing the threat of jail for first-time offenders; and 2) deterring repeat offenders by posing the threat of even harsher punishment and by providing treatment or education following the first offense.

In preparation of a report<sup>3</sup> that PCCD published in 1985, we examined the age, sex, and driving record of 664 offenders responsible for alcohol-related fatal accidents in 1983. The age and sex profile was compared to a profile of 20,151 DUI offenders evaluated under the Alcohol Highway Safety Program in 1983 and the driving records were compared to those of the 20,638 offenders convicted or given ARD for DUI in 1983. The sex distribution for both groups was almost identical, 89% male/11% female for all offenders and 88% male/12% female for fatal accident drivers. The average age for fatal accident drivers was slightly lower at 30 years versus 32 years for all offend-

alcohol-related fatal accidents are more likely to have a prior record than DUI offenders in general, still over 85% of those drivers had no prior DUI record. This means that if a policy could be devised to provide 100% deterrence for both would-be offenders and for previous offenders, the deterrence of would-be offenders would have the most impact on improving highway safety.

The decreases in alcohol-related fatal accidents that occurred from 1982 through 1984 indicate that Act 289 did provide at least an initial deterrence to drinking and driving. Because the majority of those accidents were caused by first-time offenders and the rehabilitative sanctions under Act 289 were not yet being imposed in 1982, we may logically assume that this decrease in alcohol-related fatal accidents was largely the result of the deterrence of would-be offenders.

**THE REPEAT OFFENDER**

Act 289 was also intended to deter prior DUI offenders from repeating the offense. Table 4 shows a follow-up study of the subsequent convictions (through 1987) for the 27,049 DUI offenders who received ARD or were convicted in 1984.

TABLE 4: SUBSEQUENT DUI CONVICTIONS OF 1984 DUI OFFENDERS

PRIORS---->	-----1984 DISPOSITION-----				TOTAL	
	ARD	CONVICTION			No priors	With one or more priors
	0	0	1	2+		
SUBSEQUENT CONVICTIONS						
0	91.4%	77.8%	79.7%	73.1%	88.5%	78.0%
1	7.7%	18.6%	16.8%	20.9%	10.0%	18.2%
2+	.9%	3.6%	3.5%	6.0%	1.5%	3.8%
NUMBER	18,545	4,894	2,892	718	23,439	3,610

ers. Fatal accident drivers were more likely to have a prior DUI conviction or ARD, 14.4% compared to 10.5% of all offenders.

While drivers responsible for

<sup>2</sup>Detering the Drinking Driver, H. Laurence Ross, 1982.

<sup>3</sup>The New Driving Under the Influence Law in Pennsylvania: First Year Observations, PCCD, July 1985.

By adding the percentage of offenders with one subsequent offense to the percentage of those with two or more subsequent offenses (Table 4), we can see that 11.5% of those offenders whose first offense occurred in 1984 had a subsequent conviction. In comparison, 20.3% of offenders with one prior DUI and 26.9% of offenders with more than one prior DUI had subsequent convictions. However, research<sup>4</sup> has indicated that at best one in 200, and possibly as few as one in 2,000 drunken driving offenses result in arrest. With arrest probability so low, the aforementioned percentages may only reflect a small portion of the actual number of offenders who were not deterred from drinking and driving. The data does substantiate that offenders with prior DUI offenses are more likely to repeat the offense than those with no prior DUI offenses.

With increased enforcement, the number of people with a prior DUI offense grows each year. If these people continue to drink and drive and are arrested, the percentage of offenders with a prior offense will increase. In fact as Table 5 shows, the percentage of offenders with a prior record has more than doubled since 1980.

The number of repeat DUI offenders is small but they now account for nearly 20% of the offenders given ARD or convicted, compared to just over 10% four or

five years ago. And though these offenders are responsible for a small portion of alcohol-related accidents, their number is growing and therefore they represent a growing threat to highway safety.

One of the reasons for that growth may be the nature of drinking drivers' alcohol use. Of the 29,646 offenders evaluated through the Alcohol Highway Safety Program in 1987, 53.4% or 15,840 were rated as severe problem drinkers and 29.6% were considered moderate problem drinkers. We do not know what level or type of treatment those offenders received or if it was successful, but it seems clear their drinking problems extend beyond the highway.

### CONCLUSIONS

Since 1981, the criminal justice system has contributed to Pennsylvania's fight against drunk driving by making 68% more DUI arrests, by cutting the number of DUI court cases dismissed in half, and by putting over 13 times as many DUI offenders in jail. This effort resulted in decreases in alcohol-related accidents in 1982 through 1984 that seem to indicate that at least some people were initially deterred or sufficiently motivated to change their attitudes and habits regarding drinking and driving. However, the steady increases in alcohol-related fatal accidents since 1984 and the increasing number of offenders with prior records

strongly suggest that the present law is not achieving its intended goal of deterring drunken driving.

While the penalties and treatment established by Act 289 may be appropriate as punishment, they do not seem to be providing the level of deterrence hoped for, specifically for repeat offenders. In 1987, over 50% of offenders evaluated through the Alcohol Highway Safety Program were considered severe problem drinkers and another 30% were considered moderate problem drinkers. These individuals may not respond to even severe deterrence threats. Therefore, better methods of incapacitation or more effective rehabilitation must be sought. By increasing arrests, Act 289 has allowed us to identify more DUI offenders than ever before. The task now is to determine how to either solve the offender's drinking problem or keep him from drinking and driving. It would seem appropriate to consider such measures as installing electronic devices on an offender's vehicle to prevent him from driving drunk or using the time he spends serving mandatory sentences to aggressively treat his alcohol problem.

Whatever approach is considered, sufficient funding will be necessary to ensure its proper implementation. Many of the costs associated with the present strategy against drunk driving have been the responsibility of the municipal and county governments charged with arresting, treating, and incarcerating DUI offenders. In 1987 alone, the cost just to incarcerate drunk drivers statewide was over \$10 million. Legislation (H.B.1012) has been introduced, but not enacted, that could help ease the burden on local governments by providing some reimbursement for the costs incurred in jailing DUI offenders.

TABLE 5: PERCENT OF DUI OFFENDERS CONVICTED OR GIVEN ARD WITH A PRIOR OFFENSE

PRIORS-->	0	1	2	3+	Total w/priors
1980	91.5	7.4	.9	.2	8.5
1981	90.7	7.9	1.2	.2	9.3
1982	88.9	9.3	1.4	.4	11.1
1983	89.5	8.7	1.4	.3	10.5
1984	85.8	11.5	2.1	.6	14.2
1985	84.3	12.7	2.4	.6	15.7
1986	83.0	13.5	2.7	.8	17.0
1987	81.8	14.4	3.0	.8	18.2

<sup>4</sup>National Highway Safety Administration Technical Report 803-714, Jones and Joscelyn, 1978.

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