

Probation

Performing Pretrial Services: A Challenge in the Federal Criminal Justice System *James R. Marsh*

A Sanction Program for Noncompliant Offenders in the District of Nevada *John Allan Gonska*

Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections *National Institute of Corrections*

Probation: A Solution to California's Drunk-Driving Problem *Lea L. Fields*

Use of Force in Community Supervision *Paul W. Brown*

Evolutional Role of the Board of Parole *Michael M. Pacheco*

Programs on Probation *Thomas Ellsworth*
Karin A. Helle

Programs for Non-Eligibles: Who Gets an ISP Sentence? *Philip L. Reichel*
Billie D. Sudbrack

Program Expansion Worth the Costs? *Thomas B. Marvell*

Programs - What Works With Juvenile Offenders: A Review of the Literature and Experience *Peter W. Greenwood*

153611
153619

DECEMBER 1994

**U.S. Department of Justice
National Institute of Justice**

153611-
153619

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Federal Probation

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LVIII

DECEMBER 1994

NUMBER 4

This Issue in Brief

Performing Pretrial Services: A Challenge in the Federal Criminal Justice System.—Contending that “the Federal release and detention process is far from routine and mundane,” author James R. Marsh explains in depth the challenges Federal pretrial services officers face daily. He discusses the responsibilities inherent in pretrial services—to assess the risks defendants pose, to complete investigations and prepare reports for the court, and to supervise defendants released pending disposition of their cases—and the challenges that accompany such responsibilities.

A Sanction Program for Noncompliant Offenders in the District of Nevada.—When probationers do not comply with the terms and conditions of supervision, probation officers must report the noncompliant behavior and take steps to correct it. Author John Allan Gonska describes how the U.S. probation office in the District of Nevada addressed the issue of noncompliance by creating a sanction program. The author explains how the program was developed and how it works, giving examples of violations and appropriate sanctions for them under the program.

Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections Conference.—With a changing workforce and a changing work environment, how do community corrections agencies recruit and retain qualified employees? The National Institute of Corrections sponsored a conference to explore this issue with a group of community corrections managers from around the country. This article reports on the group’s discussion—which focused on probation and parole image, the recruiting market, qualifications, training, and motivation—and offers the group’s recommendations.

Pretrial Diversion: A Solution to California’s Drunk-Driving Problem.—Author Lea L. Fields explains how California currently has an array of pretrial diversion programs to address offenses ranging from drug abuse to domestic violence to sexual molestation but has no such program for drunk driving. The author examines drunk-driving diversion programs in

Oregon and Monroe County, New York, explains the benefits of these types of programs, and tells how a diversion program for drunk drivers could be set up in California.

The Continuum of Force in Community Supervision.—In these times of increased emphasis on offender control, some community corrections agencies may be providing their officers with lethal weapons such as revolvers and less-than-lethal weapons such as stun guns and personal defense sprays with little or no guidance as to when their use is appropriate. Author Paul W. Brown stresses the importance of proper training and describes the “continuum of force,” the primary tool for providing guidance to officers in the use of force. He explains how the continuum of force works, focusing

CONTENTS

Performing Pretrial Services: A Challenge in the Federal Criminal Justice System . . . James R. Marsh	3
	153611
A Sanction Program for Noncompliant Offenders in the District of Nevada. . . . John Allan Gonska	11
	153612
Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections Conference . . . National Institute of Corrections	16
153613	
Pretrial Diversion: A Solution to California’s Drunk-Driving Problem. . . . Lea L. Fields	20
153614	
The Continuum of Force in Community Supervision . . . Paul W. Brown	31
153615	
The Educational Role of the Board of Parole . . . Michael M. Pacheco	38
153616	
Older Offenders on Probation. . . Thomas Ellsworth Karin A. Helle	43
153617	
Differences Among Eligibles: Who Gets an ISP Sentence? . . . Philip L. Reichel Billie D. Sudbrack	51
153618	
Is Further Prison Expansion Worth the Costs? . . . Thomas B. Marvell	59
153619	
Departments	
Up to Speed	68
Reviews of Professional Periodicals	68
Your Bookshelf on Review	74
It Has Come to Our Attention	82
Indexes of Articles and Book Reviews	83

153614

Pretrial Diversion: A Solution to California's Drunk-Driving Problem

BY LEA L. FIELDS

Attorney at Law, San Diego, California

DIVERSION IS defined as "the halting or suspension, before conviction, of formal criminal proceedings against a person, conditioned on some form of counter performance by the defendant."¹ Such counter performance involves attending a program which may include treatment, counseling, and other educational devices aimed at changing the defendant's behavior. The California Penal Code currently provides for numerous pretrial diversion programs. For example, a drug diversion program offers a second chance to the experimental user who has not yet become seriously involved with drugs. In addition to programs like this one, which are specifically provided for by the Penal Code, a statute provides for the creation of additional programs.²

While a few states provide diversion for drunk drivers, California does not. This raises the following question: If the drug user can get a second chance in California, why not the drunk driver? This article will discuss pretrial diversion as it currently exists in California, emphasizing the drug diversion program; examine two diversion programs for drunk drivers currently used in Oregon and in one New York county; and propose that California use its statutory authority to implement a drunk-driving diversion program of its own.³

Pretrial Diversion in California

California defines pretrial diversion as "the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication."⁴ California currently has specific statutes that set forth pretrial diversion programs in the areas of drug abuse,⁵ domestic violence,⁶ child abuse or sexual molestation,⁷ and bad checks⁸ and for defendants who are retarded,⁹ traffic violators,¹⁰ and physically abusive parents.¹¹ In addition, one section of the California Penal Code provides for the creation of additional diversion programs, as each individual county may want to implement.¹² This statute has been used to create various programs throughout the state. For example, San Francisco has developed a standard program applicable to almost any misdemeanor offense. In addition to general criteria which are applied to all misdemeanor offenses, the San Francisco Pretrial Diversion Project provides eligibility require-

ments individually tailored to the specifics of each offense. Misdemeanor offenses included in the San Francisco Pretrial Diversion Project are battery¹³; assault with a deadly weapon or force likely to produce great bodily injury¹⁴; fighting, noise, offensive words¹⁵; burglary¹⁶; theft¹⁷; shoplifting¹⁸; grand theft¹⁹; receipt of stolen property²⁰; vandalism²¹; and disorderly conduct.²² During one 12-month period,²³ the San Francisco Pretrial Diversion Project diverted over a thousand cases.²⁴

Pretrial diversion benefits both the system and the defendant. Not only does pretrial diversion help alleviate crowded court calendars and clear jail space, but it also provides defendants an incentive to stay away from criminal activity during diversion and to change their behavior.

California's Drug Diversion Statute

A good example of pretrial diversion is California's drug diversion program. This program is designed to

identify the experimental or tentative user before he becomes deeply involved with drugs, to show the user the error of his ways by prompt exposure to educational and counseling programs in his community and to restore him to productive citizenship without the lasting stigma of a criminal conviction [and] this quick and inexpensive method of disposition, when appropriate, reduces the clogging of the criminal justice system by drug abuse prosecution and thus enables the courts to devote their limited time and resources to cases requiring full criminal processing.²⁵

To be eligible for drug diversion the defendant must be charged with an offense of using or being under the influence of limited amounts of certain controlled substances.²⁶ In addition, the defendant must satisfy a list of criteria which favor the first-time offender.²⁷ The defendant may ask for diversion at any time before trial begins, even after pretrial motions have been argued.²⁸ The district attorney reviews the defendant's file to determine if the defendant meets the eligibility requirements. If the defendant is eligible, the district attorney must notify the defendant and the defendant's attorney.²⁹ If the defendant consents and waives his or her right to a speedy trial, the court may summarily grant diversion or it may forward the case to the probation department, which investigates and determines if the defendant would benefit from the diversion program.³⁰ After it completes the investigation, the probation department informs the court and the court decides what program, if any, is

appropriate. If the district attorney finds that the defendant is not eligible to participate in the program, the district attorney files a declaration with the court which excludes the defendant³¹ who is not entitled to a hearing on the issue.³²

Once the court has placed the defendant on diversion, the court stays any pending criminal charges and exonerates the defendant from paying any existing bail.³³ The diversionary period lasts for a minimum of 6 months but no longer than 2 years. During this time, the defendant must attend counseling sessions and/or diversion classes supervised by the probation department. The probation department files progress reports with the court at least every 6 months. If the defendant successfully completes the diversion program, the court dismisses pending charges and deems the arrest never to have occurred.³⁴ The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense.³⁵ If the defendant does not successfully complete the program, the court reinstates the original charges and sets trial.

If a first-time drug user can get a second chance in California, why not a first-time drunk driver? Other states have pretrial diversion programs for drunk drivers. The Oregon pretrial diversion program for drivers convicted for the first time of Driving While Under the Influence of Intoxicants (DUI) is an example of such a program.

Oregon's DUI Diversion Program

Since 1981 Oregon has had a pretrial diversion program for first-time DUI defendants. This program is currently the only pre-conviction diversion program for drunk drivers in the United States. The program is intended for people charged with DUI who have a satisfactory prior driving record and who pose little risk of damage to others or property.³⁶

The person charged with DUI has three options available when arraigned: (1) plead guilty or no contest; (2) plead not guilty; or (3) petition for entry into the DUI diversion program. During the first 14 months that the diversion program existed, 12,291 Oregonians chose the program instead of facing the DUI charge.³⁷ This figure represented 80 to 90 percent of all first-time defendants who were eligible for the program at the time.³⁸ The Motor Vehicles Division, which monitors the recidivism rate among DUI offenders, indicated that only 127 of the first 12,291 diversion participants were subsequently convicted of DUI.³⁹ This figure represents a mere 1.1 percent recidivism rate among the diversion participants for that period.⁴⁰ This low rate of recidivism is impressive considering the fact that out of 4,505 drivers convicted of DUI in 1980 before the diversion program was

available, 214 (4.8 percent) were subsequently convicted again in the same year.⁴¹

Oregon's pretrial diversion program for first-time DUI defendants is essentially self-sustaining. The participants pay the state, the court, and the agency or organization providing the diagnostic assessment. Court administration costs are paid out of the state's public funds created by property and state income taxes. In 1981, when the diversion program was first implemented, the average diversion filing fee paid by an offender was \$274. Out of that, \$100 went into an indigent fund to pay for offenders who could not afford the fee. It was anticipated at the time the fund was created that one-third of the people opting for diversion would be indigent.⁴² Although the diversion filing fee has risen over the years,⁴³ a portion of it is still placed in the indigent fund. Funds to cover the cost of indigent offenders have always been adequate.⁴⁴

To enter into the pretrial diversion program, the defendant must agree to follow certain conditions and waive specific constitutional rights.⁴⁵ The agreements used vary slightly throughout the state. A typical agreement requires the defendant to attest that: (1) he or she has no charge of DUI on the date of the present offense or within 10 years before the date of commission of the present offense; (2) he or she is not participating in a diversion program or any similar alcohol or drug rehabilitation program on the date of commission of the present offense or within 10 years before the date of commission of the present offense had not so participated; (3) he or she has not been convicted of murder, manslaughter, criminally negligent homicide, or assault resulting from the operation of a motor vehicle; (4) that the present DUI incident did not involve a reportable accident⁴⁶; or (5) the date of commission of the offense for which the agreement is petitioned is later than November 1, 1981. The defendant also has to agree to: (1) complete, at the defendant's expense, a diagnostic assessment to determine the possible existence of an alcohol or drug abuse problem⁴⁷; (2) complete the program of treatment indicated as necessary by the diagnostic assessment⁴⁸; (3) not use intoxicants in conjunction with the operation of a motor vehicle⁴⁹; (4) keep the court and the Motor Vehicles Division advised of current mailing and residential addresses at all times during the diversion period⁵⁰; (5) waive any former jeopardy rights under Federal and state constitutions; and (6) pay the diversion filing fee.⁵¹

One interesting aspect of the Oregon DUI diversion program is what happens to the defendant's driving record when he or she enters the program. Carl R. Amala describes the process as follows⁵²: When the Department of Motor Vehicles receives information that an individual has entered the program, the letters

"DIVR" are entered on the individual's permanent driving record. The entry also includes the individual's entry date and projected termination date in the program. If the person successfully completes the program, the DIVR notation remains on his or her record. If the person is withdrawn from the program, either because the person was not initially eligible or failed to comply with the terms of the diversion agreement, either the DIVR entry is changed to reflect the conviction⁶³ or, if the individual is found not guilty, the DIVR is deleted from the individual's record.⁶⁴ This information becomes crucial if the person is later arrested on an alcohol-related charge. If the individual is ever charged with another DUII, law enforcement officials quickly will be able to determine whether or not the person ever participated in the diversion program within the statutory 10-year period.⁶⁵

In 1983 the Oregon Legislature received pressure from Mothers Against Drunk Driving (MADD) and other organizations to enact tougher drunk-driving laws. The legislature closely reviewed several loopholes in the statute and put into effect a revised statute.⁶⁶ One of the 1983 amendments to the statute states that the court "shall" terminate the diversion agreement if the diversion participant fails to fulfill the terms of the diversion agreement.⁶⁷ A diversion agreement is often violated when the defendant is charged with DUII even if the defendant is later found not guilty of the new offense.⁶⁸ Further, any use of intoxicants in conjunction with the operation of a motor vehicle may violate a particular diversion agreement.⁶⁹ Therefore, if a defendant were charged with DUII but later found to have a blood alcohol level below the required amount for the charges, the defendant's diversion agreement would still be violated because the defendant was under the influence of intoxicants.

Whether or not the DUII diversion program is right for a particular person depends on several factors.⁶⁰ The costs of the program, both financial and non-monetary expenses, should be balanced against the benefits that can be derived from diversion. In addition to the financial expense, the offender must consider the time required to participate in the diversion program. Some individuals may find that participation in the diversion program is not cost effective because of the time involved. The program itself lasts 1 year in addition to the actual treatment time. The treatment a participant receives is determined by the evaluators of the program.

These two costs should be weighed against the benefits derived from entering and completing the program. Avoiding increased insurance rates is one possible benefit. Since the DIVR entry is on the diversion participant's driving record, the driver's insur-

ance company may find out about it and raise the driver's rates.⁶¹ On the other hand, the conviction of DUII requires the defendant to fill out a form⁶² which guarantees that the insurance company will find out about the offense. This usually results in the insurance company cancelling the person's policy or drastically increasing premiums.

Another benefit to diversion is that the person's record will not include a conviction. The stigma of a DUII conviction on one's driving record may have a serious effect on one's life, including the chances for future employment. Because the option for diversion is pretrial, successful completion of the program allows the individual to report honestly to future prospective employers that he or she has never been convicted of a crime.⁶³

A further benefit to consider is lack of a license suspension.⁶⁴ A person in Oregon who is convicted of DUII faces a mandatory 1- to 3-year license suspension. The diversion participant does not face any license suspension.⁶⁵ When some potential diversion participants weigh these factors and possible consequences of participation in the diversion program, they may conclude that it is simply not worth their time or expense.

Mothers Against Drunk Driving (MADD) typically supports strict penalties for drunk driving and opposes any legislation that lets the drunk driver off in any way. Nevertheless, the Oregon MADD chapter generally encourages the diversion program as it currently exists.⁶⁶ The state chairperson for MADD-Oregon stated that since the majority of drunk drivers are "social drinkers" and first-time offenders, diversion "wakes up" the drunk driver before he or she becomes a "problem drinker" and a repeat drunk driver.⁶⁷ However, there are still parts of the diversion program which MADD would like to improve. One of these is the occasional abuse of judicial discretion. Even with the 1983 amendment, MADD has found that a sympathetic judge often will give a defendant who has failed to complete the program successfully a second chance to complete it. MADD-Oregon contends that an unsuccessful participant in the program should be sent to trial, as the statute provides.⁶⁸

Under the Oregon drunk-driving statute a person never has to enter a guilty plea before entering the program. MADD-Oregon is currently in the process of submitting to the legislature a bill which would require the defendant to enter a guilty plea before entering the program. This, MADD believes, would create an even greater incentive to the defendant to complete the program successfully and would prevent judges from leniently offering the defendant a second chance.⁶⁹

In 1989 the Northwest Professional Consortium for the Oregon Traffic Safety Commission evaluated the effectiveness of the diversion program.⁷⁰ The study

compared recidivism for a randomly selected sample of 1987 DUII defendants who were diverted and a randomly selected sample of 1987 DUII defendants who were convicted.⁷¹ The results suggested that defendants who were diverted had a lower recidivism rate than defendants who were convicted.

There are two key differences between the diversion process and the conviction process for a first-time drunk driver. First, divertees are evaluated and receive treatment sooner than convicts because convicts must wait for a trial date and can only proceed to evaluation and treatment at the conclusion of the trial. Second, convicts are tried and receive judicial sanctions consisting of community service or jail time, whereas divertees who complete diversion do not receive sanctions.⁷²

Even the harshest of critics of the diversion process can see the benefit to divertees of quicker evaluation and treatment. For example, consider the consequences for a drunk driver who is not offered an opportunity for diversion. The person's license would be suspended while he or she is awaiting a trial date. The trial date may take 6 months to 2 years depending on the court's backlog. Meanwhile, the average defendant is still going to drive despite the suspended license, and if the defendant is a habitual or problem drinker, chances are good that he or she will be arrested again for DUII. When the defendant is finally brought to trial and convicted, his or her sentence will most likely include jail time, judicial sanctions, and possibly a treatment program. In contrast, offering diversion to the defendant makes treatment available almost immediately because there is no delay for a trial.

In 1992 the Traffic Safety Division of the Oregon Department of Transportation evaluated the state's traffic situation and found the following. After 11 years of using diversion, the fatal and injury accident rate⁷³ had declined from 1.15 to 0.78; nighttime fatal and injury accidents had declined by 42.8 percent; the percentage of fatalities that were determined to be alcohol-related had decreased from 50.9 percent to 43.5 percent; and the DUII arrest rate from the state had decreased from 1,042.3 to 869.7 per 100,000 population.⁷⁴ Given the decline in injury and fatality rates caused by auto accidents during the time that pretrial diversion has been in effect, it is reasonable to believe that a correlation exists between the two.

DWI Pretrial Diversion in Monroe County, New York

Monroe County, one of the largest counties in New York, has a drunk driver diversion program which is very different from that used in Oregon. Unlike the program in Oregon, it is not for the first-time offender

but for the second-time offender. Monroe County will not take the first offender because of the service and cost involved.⁷⁵

Under New York State law, a second arrest for Driving While Under the Influence (DWI)⁷⁶ within 10 years of a DWI conviction is a felony charge. According to the Pretrial Services Corporation of the Monroe County Bar Association, the district attorney initially offered no reductions on the first DWI, so it took only a few years of this strict enforcement policy before offenders who were more than social drinkers began to reappear in the system.⁷⁷ By 1979 the tremendous increase in felony DWI arrests overwhelmed the entire criminal justice system.⁷⁸ Then the district attorney turned to the pretrial diversion program.⁷⁹ The Pretrial Services Corporation of the Monroe County Bar Association has operated this felony DWI diversion program ever since then. Hundreds of DWI defendants have received services that offered them the opportunity to resolve their alcohol abuse problem and reduce their pending criminal charge.⁸⁰ The objectives of the pretrial diversion program are:

- 1) to provide defendants with an opportunity to change their behavior by actively participating in treatment; 2) to reward the defendants for successfully completing diversion by allowing them to plead guilty to a reduced charge of DWI as a misdemeanor, thereby avoiding a felony conviction; and 3) to interrupt the defendants' pattern of arrests by attempting to prevent any future involvement with the law.⁸¹

The Pretrial Services Corporation of the Monroe County Bar Association describes the operation of the program as follows.⁸² All felony DWI files are initially screened by the district attorney's DWI Bureau. Defendants involved in serious personal injury accidents, or those with extensive criminal or motor vehicle offense records, are excluded from consideration. All others are notified through their attorney that they have the option of participating in the diversion program. A pretrial diversion counselor then interviews the defendant to assess the extent of treatment needed and whether the person would even benefit from diversion. All clients accepted into the program must immediately surrender their driver's license for 1 year and agree to comply with a treatment plan and waive their right to a speedy trial. The client must then sign a contract which states that he or she agrees to abide by the terms of diversion. The lower court judge adjourns the case for at least 6 months after receiving the signed contract. During the adjournment, the diversion counselor closely monitors both the client and the treatment program. At the end of the period, the counselor makes a termination recommendation to the court based on the client's demonstrated behavior change and attitudes related to drinking. Favorable recommendations result in a misdemeanor DWI plea,

while unfavorable termination results in prosecution of the felony DWI.

The Monroe County Pretrial Diversion Program was created and is funded by STOP-DWI, a program which educates New York communities about the dangers of driving under the influence of alcohol and drugs. The program also provides funding to groups and organizations engaged in activities promoting alcohol and drug traffic safety.⁸³ STOP-DWI is supported entirely by local fines collected from drunk and drugged drivers. There has been much interest in determining the program's effectiveness in reducing future DWI arrests. In 1987 the Pretrial Services Corporation of the Monroe County Bar Association evaluated participants who had completed the program in the first 3 years of its existence, 1981-83. The results showed that successful completion of the program significantly reduced recidivism.⁸⁴

In 1992 the Monroe County Public Safety STOP-DWI Program conducted a study to determine the effects of the pretrial felony DWI diversion program.⁸⁵ This study revisited the earlier study population, to follow rearrests over a much longer period of time, and examined a new population of participants who had contact with the program between 1984 and 1987.⁸⁶ Two changes had taken place in the program over the years: more clients had been accepted into the program⁸⁷ and there had been an expansion of services and positive changes in the therapeutic approach to alcohol-dependent clients in the 1980's.⁸⁸ Both of these changes were taken into consideration by the Monroe County Public Safety STOP-DWI Program in evaluating the program's effectiveness.

The study first focused on a population of 580 clients who had initial contact with the program between January 1981 and December 1983.⁸⁹ Of those clients, 307 were favorably terminated from the program, 148 were unfavorably terminated, and 125 were not accepted for the diversion services.⁹⁰ The study monitored rearrests over a period of 36 months after termination from the program or, in the case of those clients not accepted, from the point of last contact with the program.⁹¹ The long-term study findings are shown in table 1:

TABLE 1. PERCENTAGE OF CLIENTS REARRESTED

	% Arrested in 0-36 Months	% Arrested in 0-108 Months
Favorably Terminated	11.1	23.1
Unfavorably Terminated	17.6	31.1
Not Accepted in Program	23.2	34.4

The recidivism rate for the unfavorably terminated and unaccepted clients appeared to be highest within the first 3 years after conviction.⁹²

The 1992 study then focused on those seen by the program between January 1984 and December 1987.⁹³ Of the 770 clients in this group, the favorably terminated clients numbered 519, while the unfavorable group included 118 and the not accepted group numbered 133.⁹⁴ The rearrest rates for favorable terminations were found to be comparable to those found in the earlier study: 9.2 percent were rearrested within 36 months of program completion.⁹⁵ The unfavorable termination group had a 15.9 percent rearrest rate for the same period.⁹⁶ Finally, the not accepted group had a rearrest rate of 19.4 percent, more than double the rate of the favorable termination group.⁹⁷

In addition to the higher rates, the unfavorable and the unaccepted groups were rearrested within a significantly shorter period of time, averaging 13.3 and 12.3 months respectively.⁹⁸ In comparison, those clients who successfully completed the program and who were later rearrested averaged 20.3 months to rearrest.⁹⁹

The success of this pretrial diversion program is due in part to the ongoing relationship between the pretrial diversion counselor, the defendant, and the direct treatment process. Further, the program forces the defendant into treatment that he or she would not otherwise have sought because most drinkers will not admit to needing treatment.¹⁰⁰ Most defendants enroll in pretrial diversion not because they want treatment, but because they want to avoid a felony criminal record.

Participation in the program is also compelled by the fear of license suspension. Since defendants are required to surrender their driver's licenses for a 1-year period when they sign the pretrial diversion contract, "the loss of personal freedom and mobility forces them to restructure their lives."¹⁰¹ Although many other states, including California, revoke a defendant's license, such action is not coupled with a diversion program. Because the two events are coupled in Monroe County, the defendant has more incentive not to drive: if caught, he or she will be dropped from the diversion program and face a felony conviction.

The fear of a felony conviction is a final reason for the program's success.¹⁰² This fear stems from the person's desire not to be labeled a "criminal" or "bad." A felony conviction is a stigma that lasts a lifetime. It requires not only a mandatory jail sentence,¹⁰³ but a loss of other freedoms including the rights to vote, have a passport, register guns, hold public office, get licensed in certain professions, and hold certain jobs.¹⁰⁴

In general, the Monroe County Chapter of MADD is pleased with the Felony Pretrial Diversion Pro-

gram.¹⁰⁵ However, one of MADD's complaints about the Felony Drunk Driving Program is that often the DWI charge is plea bargained down to a lesser charge.¹⁰⁶ MADD complains that when this happens, defendants are not offered diversion because the lesser charge does not include the diversion.¹⁰⁷ Although generally the pretrial diversion process is considered a good one, MADD thinks it should be handled more consistently.¹⁰⁸ Consistency will only occur if plea bargaining is prohibited.

The district attorney's office counters MADD's complaint by stating that it strictly follows certain guidelines in determining whether or not to offer a plea bargain.¹⁰⁹ If the person's blood alcohol level is below 0.12 percent, there are no aggravating circumstances, the person agreed to take the breath test, and he or she generally has a clean record, the district attorney's office will usually reduce the charge.¹¹⁰ If the blood alcohol level is above 0.12 percent, the district attorney's office may reduce the charge if: (1) a significant probable cause problem exists, (2) the situation is one in which the person's employer would be required to fire the person due to the felony conviction, or (3) the person has a severe or terminal illness.¹¹¹

Pretrial Diversion for DUI Offenders in California

If California finds it necessary to provide diversion for drug users, why not for alcohol users as well? Alcohol is a drug. Therefore, it follows logically that those who drink should not be treated any differently than those who take illegal drugs. Casualties that occur in California annually as a result of drunk drivers are not diminishing despite the enforcement of harsh sentencing procedures. The success of the Oregon and Monroe County drunk-driving diversion programs shows that diversion can be another way to get the drunk driver off of the street. Creation of a pretrial diversion program for drunk drivers in California makes sense.

Who Are the Drunk Drivers?

There are more than 146 million licensed drivers in the United States.¹¹² About 1.3 million, or almost 1 percent, are arrested yearly for driving while intoxicated.¹¹³ In 1991 an estimated 19,900 persons died nationwide in alcohol-related traffic crashes, constituting 48 percent of total traffic fatalities.¹¹⁴ Although the problem drinker is particularly responsible for the majority of alcohol-related crashes,¹¹⁵ drunk drivers, whether social drinkers or problem drinkers, generally are or will become repeat DUI offenders. Many retain their licenses and continue to drink and drive while on probation. Others drink and drive after their licenses have been suspended or revoked.

The number of people killed in alcohol-related crashes in California has decreased 15 percent since administrative license revocation (ALR) and the lower (0.08 percent) blood alcohol content (BAC) laws went into effect in 1990. ALR allows police officers to confiscate the license of a drunk driver at the time of the arrest so that he or she immediately experiences the consequences of his or her actions. Currently 29 states have an ALR provision because it has proven to be one of the most effective methods for reducing drunk-driving crashes.¹¹⁶ During California's first year of enforcing ALR, more than 280,000 licenses were administratively suspended by the Department of Motor Vehicles.¹¹⁷ Nevertheless, during a 1-year period ending in June 1991, 2,120 Californians were killed in alcohol-related crashes¹¹⁸ and 59,091 people were injured.¹¹⁹ These statistics indicate that something more must be done to control the problem of drunk driving in California. Pretrial diversion may be the answer.

Alcoholism Can Be Treated

California's current drunk-driving laws are aimed toward punishment and deterrence. Much of this legislation has been promoted by MADD. The mission of MADD is to stop drunk driving and to support its victims.¹²⁰ During its 10th anniversary in 1990, MADD renewed its focus on two primary goals: aiding the victims of alcohol and other drug-related crashes and reducing the incidence of impaired driving.¹²¹ MADD chapters work diligently to accomplish goals on the state level. Since 1981 more than 1,200 state laws have been passed as a result of MADD's efforts.¹²²

A driver convicted of Driving While Intoxicated (DUI) in California may receive a variety of stiff punishments including county jail; state prison; fines and penalty assessments; drinking and driving treatment; vehicle impoundment or forfeiture; license restriction, suspension, or revocation; ignition interlock; and probation.¹²³ Another term which has been imposed quite frequently recently is the MADD Victim Impact Panel. These panels are composed of three or four victims of drunk-driving crashes who tell their stories to defendants. The goal of the program is to enable defendants to understand their crime from the victim's perspective and thus to choose never again to drink and drive. Although the Victim Impact Panel has an obvious emotional effect on the attendees, to date no study has assessed its success.¹²⁴

In 1991 William N. Evans conducted a study evaluating seven anti-drunk-driving laws.¹²⁵ He examined preliminary breath tests, sobriety check-points, no-plea-bargaining provisions, mandatory jail sentences, open-container laws, and administrative license sanctions. None of these measures, with the possible exception of breath tests and sobriety check-points, had

any effect on motor-vehicle fatalities.¹²⁶ These drunk-driving laws are ineffective because they do not reach the crux of the problem: the behavior of the drunk driver. Alcohol, like illicit drugs, can become an addiction, and addiction can only be controlled by treating the addict, not by creating more laws.

As the 1989 Northwest Professional Consortium study of the Oregon program indicated, those persons who diverted had a lower rate of recidivism compared to those convicted because they received treatment earlier. Those convicted would have to wait months for trial. In the meantime, those with a real alcohol problem would still drive despite their suspended licenses, thus risking another DUI. In California once a defendant gets to trial and is convicted, the sentence received may not even include probation. If it does not include probation, the drunk driver will not receive any treatment as part of the sentence. If probation and treatment are received, the treatment currently imposed at sentencing is quite minimal and does not include an ongoing relationship with a treatment counselor.

For example, in San Diego County those currently convicted of a first DUI offense will participate in an alcohol counseling and education program primarily given in a classroom setting. There are only three face-to-face contacts with a counselor.¹²⁷ This minimal treatment is the primary response to DUI offenses because there are just not enough police force, judiciary, or jail space to enforce increased penalties. As a result, the public perceives that the laws will not be enforced.¹²⁸

The person who drinks and chooses to drive will continue to do so because either that person believes he or she will not get caught, or, if caught, he or she will not be severely punished. The unsupported threat of increased penalties is not sufficient to achieve long-term changes in habitual drinking and driving behavior.¹²⁹ Experts believe that the prospect of jail time or loss of a driver's license may be effective in getting the attention of the habitual drunk driver who has never been caught, "but unless treatment is available to capitalize on this attention, powerful habits will re-emerge as the memory of punishment fades."¹³⁰ If California is already using rehabilitation instead of retribution for the drug abusers, California should be using it for the alcohol abuser.

On June 13, 1993, the National Chapter Board of Directors of MADD passed a resolution opposing diversion programs for DUI offenses.¹³¹ This resolution is contradictory to the mission statement of MADD, which includes the goal to stop drunk driving. The only way to stop drunk driving is to change the driver's behavior, which is not accomplished by merely the enforcement of strict penalties.¹³² As stated above,

both the Oregon and the Monroe County, New York, MADD chapters have seen the benefits of diversion programs. Considering the low rates of recidivism resulting from both programs, it is surprising that MADD would oppose a program that would keep drunk drivers off the road.

How the Program Should Be Set Up

The goals and procedures in a diversion statute for DUI drivers would be similar to those in the analogous drug abuse statute. The statute would identify the experimental or tentative drinker before he or she became seriously involved with alcohol; treat the alcoholic by promptly enrolling him or her in educational and counseling programs in the community; and restore the alcoholic to productive citizenship without the lasting stigma of a criminal conviction.

Offering diversion to first-time drunk drivers rather than sending them to trial has clear benefits. Early treatment of first-time drunk drivers increases the chances of changing their behavior before they go back on the street, on a suspended, revoked, or renewed license, and kill themselves or others.

California could follow the process already used for the drug diversion statute. As to the particulars specific to drunk driving, California has two excellent models to follow with the Oregon and Monroe County programs. The indigent fund and DMV entry system used in Oregon are good recommendations because they ensure access to the program and efficient detection of repeat offenders. California can also learn from these two programs' mistakes. For example, the program should ensure consistency by limiting plea bargaining and judicial discretion in allowing the defendant who does not successfully complete the program to get another chance. The fact that the local chapters of MADD where these programs are being implemented have generally accepted the programs speaks favorably about their success. Both diversion programs meet MADD's mission because they both contribute to reducing the incidence of drunk driving.

Finding treatment programs to handle the diverted defendants is not a problem. Treatment programs are available to handle the treatment and counseling aspects of any type of diversion program. Through the use of questionnaires and existing testing techniques, treatment providers can determine appropriate levels of treatment for diverted drunk drivers. In fact, some of these programs are already handling drug diversion cases.¹³³

Some might argue that California has just too many first-time drunk drivers to handle a program similar to Oregon's. Due to California's size and the number of drunk drivers in the state, the cost of creating a pretrial diversion program for first-time drunk drivers

may be financially and administratively impossible at this time. But this argument must be weighed against the savings that would accrue by keeping first-time drunk drivers out of courtrooms and jails now and by preventing them from returning in the future. This will not happen if they do not get the treatment they need to change their behavior. Even if these arguments preclude diversion for first-time drunk drivers, California should at least explore treatment of second-time offenders.

Whether California decides to choose to divert the first- or second-time offender, certain factors are common to both the Oregon and Monroe County programs which must be maintained: (1) the defendant signs an agreement agreeing to the terms of the program; (2) defendants are evaluated to determine treatment needs; (3) defendants are carefully monitored; (4) the program is paid for by the defendant, either directly or indirectly; (5) the defendant is not released until authorities determine that the defendant has sufficiently completed the program; and (6) if the defendant does not successfully complete the program, he or she faces a conviction.

The Foundation for Traffic Safety proposes that other factors must also be considered.¹³⁴ The duration of the treatment must be long enough to change the client's attitude and behavior while the client is still in the program. Alcohol abuse and intoxicated driving are habits which are difficult to break. Therefore, the client must practice alternative behavior until it too becomes habitual. This would mean a minimum treatment duration of 6 months, not 3 as it currently stands.¹³⁵ Also, the program must include goals beyond merely avoiding future DUI's.¹³⁶ These include helping the clients understand the possible risks and damages of alcohol abuse in their lives, focusing on how drinking and driving are counterproductive.¹³⁷ Furthermore, the program must be able to accommodate different types of drinkers, for example, the social drinker and the heavy drinker.¹³⁸ Finally, treatment must include training in problem-solving so that clients are prepared to handle the unanticipated challenges they encounter after concluding treatment, calling for the client to assume responsibility for self-monitoring and for seeking help to deal with any future manifestations of alcohol abuse. Such training should be given in a direct treatment process.¹³⁹ Also, MADD would suggest that the Victim Impact Panel become a part of the program due to the apparent success of the panel.¹⁴⁰

Conclusion

Recent statistics indicate that drunk drivers are a problem in California. Under current law, those ultimately convicted of DUI may receive treatment, but

by then it is often too late because the driver has already been charged with another DUI offense.

Creating a pretrial diversion program for drunk drivers in California would protect citizens from unnecessary intervention of the criminal justice system, reduce court congestion and criminal justice costs, reduce crime, and improve the quality of justice.

Oregon and Monroe County, New York, provide us with examples of how a successful diversion program for drunk drivers could be set up. Considering the low rates of recidivism exhibited in both programs and the support the programs receive from local MADD chapters, there is no reason why California should not adopt a similar program. A pretrial diversion program for drunk drivers would benefit both the drinker and the public in the long run by keeping drunk drivers off the street.

NOTES

¹B.J. George, *Screening, Diversion and Mediation in the United States*, 29 N.Y.L. SCH. L. REV. 1-38 (1984).

²CAL. PENAL CODE §§ 1001 - 1001.10.

³Although the focus of this article is aimed at California, where this author resides, pretrial diversion for drunk driving would be beneficial to any state.

⁴CAL. PENAL CODE §§ 1001.1 (West 1985).

⁵CAL. PENAL CODE §§ 1000 - 1000.5 (West 1985).

⁶CAL. PENAL CODE §§ 1000.6 - 1000.11 (West 1985).

⁷CAL. PENAL CODE §§ 1000.12 - 1000.18 (West 1985).

⁸CAL. PENAL CODE §§ 1001.60 - 1001.67 (West 1985 & Supp. 1994).

⁹CAL. PENAL CODE §§ 1001.20 - 1001.34 (West 1985 & Supp. 1994).

¹⁰CAL. PENAL CODE §§ 1001.40 (West Supp. 1994).

¹¹CAL. PENAL CODE §§ 1001.70 - 1001.75 (West Supp. 1994).

¹²CAL. PENAL CODE §§ 1001 - 1001.9 (West 1985 & Supp. 1994).

¹³CAL. PENAL CODE §§ 242 - 243.8 (West 1988 & Supp. 1994).

¹⁴CAL. PENAL CODE §§ 245 - 245.5 (West 1988 & Supp. 1994).

¹⁵CAL. PENAL CODE § 415 (West 1988 & Supp. 1994).

¹⁶CAL. PENAL CODE §§ 459 - 461 (West 1988 & Supp. 1994).

¹⁷CAL. PENAL CODE § 484 (West 1988 & Supp. 1994).

¹⁸CAL. PENAL CODE § 490.5 (West 1988 & Supp. 1994).

¹⁹CAL. PENAL CODE § 487 (West 1988 & Supp. 1994).

²⁰CAL. PENAL CODE § 496 (West 1988 & Supp. 1994).

²¹CAL. PENAL CODE § 594 (West 1988 & Supp. 1994).

²²CAL. PENAL CODE § 647(b) (West 1988 & Supp. 1994).

²³July 1, 1991, through June 30, 1992.

²⁴Two hundred thirty-four cases for battery, 30 for assault with a deadly weapon, 23 for fighting/noise/offensive words, 92 for bur-

glary, 402 for theft/shoplifting, 65 for grand theft, 39 for receipt of stolen property, 86 for vandalism, and 413 for disorderly conduct. Memorandum from Will Leong, executive director of San Francisco Pretrial Diversion Program, to Management Committee (July 23, 1992).

²⁵Sean J. Geales, *California's Drug Diversion Statute: The Drug Defendant's Second Chance*, 19 LINCOLN L. REV. 135 (citing *People v. Superior Court of San Mateo County*, 11 Cal. 3d 59, 520 P.2d 405 (1974)).

²⁶CAL. PENAL CODE § 1000 (West 1985 & Supp. 1994): "[o]ne-half gram or less of a substance containing cocaine base, one gram or less of a substance containing cocaine, one gram or less of a substance containing heroin, one gram or less of a substance containing methamphetamine, one-eighth gram or less of a crystalline substance containing phencyclidine, one milliliter or less of a liquid substance containing phencyclidine, one-half gram or less of plant material containing phencyclidine, or one hand-rolled cigarette treated with phencyclidine."

²⁷CAL. PENAL CODE § 1000(a) (West 1985 & Supp. 1994): . . . all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged divertible offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation, relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has been diverted pursuant to this chapter within five years prior to the alleged commission of the charged divertible offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged divertible offense. . . .

²⁸*Morse v. Municipal Court*, 13 Cal. 3d 149, 529 P. 46 (1974).

²⁹CAL. PENAL CODE § 1000.1(a) (West 1985 & Supp. 1994).

³⁰CAL. PENAL CODE § 1001.1(b) (West 1985 & Supp. 1994): [d]efendant's age, employment and military service record, educational background, ties to the community, prior use of drugs are taken into consideration.

³¹CAL. PENAL CODE § 1000(b) (West 1985 & Supp. 1994).

³²*People v. Williamson*, 137 Cal. App. 3d 419, 187 Cal. Rptr. 107 (1982), and *People v. Paz*, 217 Cal. App. 3d 1209, 266 Cal. Rptr. 468 (1990).

³³CAL. PENAL CODE § 1000.2 (West 1985 & Supp. 1994).

³⁴CAL. PENAL CODE § 1000.5 (West 1985 & Supp. 1994).

³⁵Except as required by CAL. PENAL CODE § 1000(b) which provides that the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request made within 5 years of the arrest and the individual is not relieved of the obligation to disclose the arrest in response to a direct question contained in any questionnaire or application for a position as a peace officer.

³⁶*State v. Dendurent*, 64 Or. App. 575, 579, 669 P.2d 361, 363 (1983).

³⁷Carl R. Amala, *DUI Diversion: Where Have All the Loopholes Gone*, 20 WILLAMETTE L. REV. 319 (citing *Minutes of Hearings on*

H.B. 2974 Before the Or. House Comm. on the Judiciary, Subcomm. 1, 61st Or. Legislative Assembly (June 3, 1983) (testimony of Carole Brownlow)).

³⁸*Id.*

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Hearings on H.B. 2010A - Relating to Vehicles*, Senate Committee on Justice (July 9, 1981) (statement of Rep. Donna Zazonc, District 32).

⁴³The current cost is \$237. OR. REV. STAT. § 813.240 (1993).

⁴⁴Telephone interview with Peter C. Kiefer, director of Trial Court Programs Division, Salem, Oregon (November 4, 1993). The actual amount of indigents is not as high as the one-third originally anticipated. Many times the treatment agencies will treat the indigents free of cost.

⁴⁵Including the right to a speedy trial and jeopardy rights in any subsequent action. *Id.* at 37 (citing 1983 Or. Laws Ch. 784 §2).

⁴⁶OR. REV. STAT. §811.720 (1993).

⁴⁷OR. REV. STAT. § 813.200(4)(b) (1993).

⁴⁸OR. REV. STAT. § 813.200(4)(c) (1993). This is at the expense of the defendant unless the defendant is found to be indigent.

⁴⁹OR. REV. STAT. § 813.200(4)(d) (1993).

⁵⁰OR. REV. STAT. § 813.200(4)(f) (1993).

⁵¹OR. REV. STAT. § 813.240(2) (1993). This is, of course, to the exclusion of those who cannot afford to pay for the program and receive their treatment paid through the indigent fund.

⁵²Amala, *supra* note 37 at 328.

⁵³By the entry "CONV."

⁵⁴Amala, *supra* note 37 at 328.

⁵⁵Amala, *supra* note 37 at 328.

⁵⁶Since 1983 the statute has been revised a second time but with minimal alteration.

⁵⁷1983 Or. Laws 784, §5.

⁵⁸Amala, *supra* note 37 at 332.

⁵⁹Amala, *supra* note 37 at 333.

⁶⁰Amala, *supra* note 37 at 329.

⁶¹Amala, *supra* note 37 at 329.

⁶²SR 22.

⁶³Amala, *supra* note 37 at 331.

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶Telephone interview with Jeane Canfield, state chairperson for MADD-Oregon (November 9, 1993).

⁶⁷*Id.*

⁶⁸*Id.*

⁶⁹*Supra* note 66.

⁷⁰Michael Finigan, *Report on the Oregon First Offender DUI Diversion Program for Oregon Traffic Safety Commission*, NORTHWEST PROFESSIONAL CONSORTIUM (1991).

⁷¹*Id.* at ii.

⁷²*Id.* at 32.

⁷³Accidents per million vehicle miles traveled.

⁷⁴Statistics compiled in 1992 by Transportation Safety Section, Oregon Department of Transportation, Salem, Oregon.

⁷⁵Telephone interview with Susan Brannon, director of STOP-DWI Program, Monroe County, New York (June 30, 1993).

⁷⁶In New York, there are two types of drunk-driving charges: DWAI (Driving While Ability Impaired) and DWI. Those individuals with blood alcohol levels of .05-.09 are charged with DWAI and those with levels of .10 and above are charged with DWI. Only those individuals charged with DWI are eligible for diversion. For example, if one were charged with DWAI and then charged with DWI, one would not be eligible for diversion.

⁷⁷Lee F. Wood, *The Effects of Treatment Modality on Recidivism with Multiple DWI Offenders in Pretrial Diversion*, Pretrial Services Corporation of the Monroe County Bar Association 7 (June 1987).

⁷⁸*Id.*

⁷⁹*Id.*

⁸⁰*Id.* at 1.

⁸¹Andrea M. Valerio et al., *DWI Diversion in Monroe County: The Role of Pretrial Diversion* 5 PRE-TRIAL SERVICES ANNUAL JOURNAL 96 (Sept. 1982).

⁸²Wood, *supra* note 77 at 8.

⁸³Robert L. King, *STOP DWI Special Traffic Options Program for Driving While Intoxicated*, MONROE COUNTY PUBLIC SAFETY STOP-DWI PROGRAM 1992 REPORT 1 (1992).

⁸⁴*Pretrial Services Corporation Felony Driving While Intoxicated Diversion Program—An Examination of Program Outcomes*, Pretrial Services Corporation of the Monroe County Bar Association (April 1993).

⁸⁵*Id.*

⁸⁶*Id.* at 2.

⁸⁷*Id.* Approximately 76 percent in 1984 to 90 percent in 1987.

⁸⁸*Id.*

⁸⁹*Supra* note 84 at 4.

⁹⁰*Id.*

⁹¹*Id.*

⁹²*Supra* note 84 at 5.

⁹³*Supra* note 84 at 6.

⁹⁴*Id.*

⁹⁵*Id.*

⁹⁶*Supra* note 84 at 7.

⁹⁷*Id.*

⁹⁸*Id.*

⁹⁹*Id.*

¹⁰⁰*Supra* note 81 at 99.

¹⁰¹*Supra* note 81 at 99.

¹⁰²*Supra* note 81 at 100.

¹⁰³*Id.* A conviction for felony DWI is 1¹/₃ to 4 years in state prison.

¹⁰⁴*Supra* note 81 at 99.

¹⁰⁵Telephone interview with Margaret Delore, president of Monroe County MADD Chapter (November 3, 1993).

¹⁰⁶DWI charges are plea bargained down to a lesser charge of DWAI.

¹⁰⁷Telephone interview with Margaret Delore, president of Monroe County MADD Chapter (November 3, 1993).

¹⁰⁸*Id.*

¹⁰⁹Telephone interview with Bruce Goldman, district attorney in charge of DWI Bureau, Rochester District Attorney's Office, Rochester, New York (November 12, 1993). Mr. Goldman was unable to provide an estimate as to how many cases actually get plea bargained.

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²Allstate Insurance Company, *The Drunk Driver May Kill You: What You Can Do to Help Get Him Off the Road* (revised February 9, 1991).

¹¹³*Id.*

¹¹⁴Statistics compiled by California Highway Patrol (1992).

¹¹⁵*Supra* note 112. Almost 20 million licensed drivers fit this description.

¹¹⁶MADD, *MADD's Legislative Efforts / Accomplishments* (1993).

¹¹⁷Statistics compiled by California Highway Patrol (1992).

¹¹⁸*Id.* note 114. A 15 percent decrease from the previous year.

¹¹⁹*Id.* A 9 percent decrease from the previous year.

¹²⁰Interview with Diane Backdahl, executive director of the MADD San Diego Chapter (November 3, 1993).

¹²¹*Id.*

¹²²MADD's *Legislative Efforts / Accomplishments*, MADD (1993).

¹²³*None for the Road: A Guide to California's DUI Laws*, Public Safety Department of Automobile Club of Southern California (April 1993):

First Conviction

Where Probation Not Imposed

-County jail 48 hours-6 months

-Fine \$390-\$1000

-6-month license suspension

-Alcohol abuse education penalty assessment up to \$75

Where Probation Imposed (3-5 years)

-Alcohol and/or Drug Treatment Program for at least 3 months

-County jail 48 hours-6 months

-Fine \$390-\$1000

-6-month license suspension may be imposed or 90-day license restriction (to and from work and treatment and within scope of employment) if proof of financial responsibility is shown

-Alcohol abuse education penalty assessment up to \$75

-Youthful Drunk Driver Visitation Program (under 21 years)

Second Conviction Within 7 years**Where Probation Not Imposed**

- 48 consecutive hours imprisonment or 10 days community service
- County jail 90 days-1 year
- Fine \$390-\$1000
- 18-month license suspension
- Ignition interlock device required
- Not reinstated until proof of financial responsibility shown
- Alcohol abuse education penalty assessment up to \$75

Where Probation Imposed (3-5 years)

- 48 consecutive hours imprisonment or 10 days community service
- County jail 10 days-1 year
- Fine \$390-\$1000
- 18-month license suspension
- Ignition interlock device required
- Not reinstated until proof of financial responsibility shown
- Alcohol abuse education penalty assessment

¹²⁴Telephone interview with Paula Meyers, MADD, San Diego, California (November 4, 1993).

¹²⁵Frank J. Chaloupka et al., *Alcohol-Control Policies and Motor-Vehicle Fatalities*, 22 JOURNAL OF LEGAL STUDIES 163 (1993) (citing William N. Evans et al., *Deterrence of Drunk Drivers: Evaluation of Recent American Policies*, 11 RISK ANALYSIS 279 (1991)).

¹²⁶*Id.*

¹²⁷Telephone interview with Ernie Hamner, program manager of San Diego State University Central District DUI Program (November 29, 1993).

¹²⁸Frank J. Chaloupka et al., *Alcohol-Control Policies and Motor-Vehicle Fatalities*, 22 JOURNAL OF LEGAL STUDIES 162 (1993) (citing H. Laurence Ross, *Detering Drunken Driving: An Analysis of Current Efforts*, 10 J. STUD. ALCOHOL 122 (Supp. 1985)).

¹²⁹J.D. Jamieson et al., *Predicting DWI Education Success*, 55 FEDERAL PROBATION 43 (1991).

¹³⁰*Id.* (citing J.S. Crandell, *Effective Outpatient Treatment for Alcohol Abusers and Drinking Drivers*, Lexington: D.C. Heath and Company (1987)).

RECOMMENDATION OF SUPPORT FOR POSITION OPPOSING DIVERSION PROGRAMS FOR DUI OFFENSES

RESOLVED: That the Board of Directors of Mothers Against Drunk Driving opposes the use of diversionary, Probation Before Judgment or similar programs which would allow offenders charged with DUI/DWI or similar offenses to avoid:

- (1) Statutory sanctions that would otherwise be imposed upon arrest and/or conviction, and
- (2) Record of conviction and license sanctions.

¹³²This author is not suggesting that severe penalties and harsh sentences should not be imposed on drunk drivers but that pretrial diversion complement the current laws.

¹³³Telephone interview with Jeff Scott of Western Corrections (November 5, 1993).

¹³⁴J.D. Jamieson et al., *Predicting DWI Education Success*, 55 FEDERAL PROBATION 43 (1991) (citing R. Reis, *Successful Results and the Future. In Proceedings of the DWI Colloquium: DWI Reeducation and Rehabilitation Programs*, Falls Church, VA: Foundation for Traffic Safety (1983)).

¹³⁵*Supra* note 123.

¹³⁶*Supra* note 134.

¹³⁷*Id.*

¹³⁸*Id.*

¹³⁹*Id.*

¹⁴⁰Telephone interview with Paula Meyers, MADD (November 4, 1993).