

PRODUCTIVITY IMPROVEMENT STRATEGIES FOR  
PROCESSING DWI & OTHER TRAFFIC CASES

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TEXAS TRANSPORTATION INSTITUTE

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**PRODUCTIVITY IMPROVEMENT STRATEGIES FOR PROCESSING  
DWI & OTHER TRAFFIC CASES**

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## **DISCLAIMER**

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## 1.0 INTRODUCTION

In Texas a person charged with a Driving While Intoxicated (DWI) offense will appear in several courts with different levels of functioning and jurisdiction. Generally the first appearance will be in a Justice of the Peace or Municipal Court for a preliminary hearing. In the preliminary hearing the Judge reads the defendant their rights and informs them of the charges. In most cases the judge refers the defendant to a county court.

All misdemeanor DWI cases are tried in county courts. Some confusion may be experienced because of the agencies that serve as the prosecutor. Some counties have a county attorney and a district attorney while others may have one or the other. Regardless of the prosecutor, the misdemeanor case will be tried in the county court.

The last court level which has jurisdiction over DWI cases is the district court. All felony DWI cases are tried in this court. To qualify for a felony there must be two prior DWI convictions on the defendants record.

In May of 1983, the regular session of the 68th legislature in Texas produced changes in the statutes that apply to the offense of driving while intoxicated. Some of these changes included a .10 percent per se law, provisions allowing admission of BAC test refusal at trial, and the prohibition of deferred adjudication. These changes have influenced the way a DWI case is adjudicated in the courts. Ostensibly, these changes were intended to increase the likelihood of swift, sure prosecution of DWI cases. However, in a previous study on the use of video tape evidence in DWI cases, Brackett, Hogue, & Orozco (1985) identified a problem concerning the processing of DWI cases. In conducting that project they discovered a wide disparity between counties in arrest, booking, and adjudication processes. These differences were noted in

ten separate counties even though the legal requirements for each county were basically the same. In the report's anecdotal section, concern was expressed about the nonproductive nature of the large number of DWI cases carried over from one year to the next. These "carry overs" appeared to be the result of inefficient processing of cases through the court system. Since the county court system bears the major responsibility for the prosecution of the offense of DWI, this system, composed of judges, court administrators, prosecutors, clerks, probation officers, etc., was thought to be responsible for some bottlenecks in case processing. These bottlenecks could have a wide range of negative effects on the effectiveness of DWI adjudication.

Support for these suppositions were obtained by examining the statewide court statistics for the adjudication of DWI cases. Using the Texas Judicial System Annual Report for fiscal years 1984 through 1986, two indices of court productivity were calculated: processing efficiency and productive efficiency. Processing efficiency is defined as cases disposed (by court action and cases dismissed) divided by the total number of cases per year (cases disposed plus cases pending). Productive efficiency is defined as cases disposed by court action (cases disposed minus cases dismissed) divided by total number of cases (cases disposed plus cases pending).

Using these two indices, a table was constructed for States' efficiency for three fiscal years (1984, 85, 86). This data is presented in Table 1.1. The data reveals that the State had a processing efficiency of .58 for fiscal year 1985. This means that statewide there were more cases processed by

TABLE 1.1 TEXAS DWI COURT ACTIVITY 1984-1986

Year	Cases Pending	Cases Disposed	Cases Dismissed	Processing Efficiency	Productive Efficiency	Percent of All Cases Disposed
1984	114,560	149,930	43,893 (16,772)*	.57	.40	29.21
1985	108,725	150,766	34,464 (18,340)*	.58	.45	29.95
1986	108,778	141,315	17,186	.57	.54	25.58

\* Number of dismissed cases after removing those dismissed after deferred adjudication.

dismissal or by court action than cases received by the system. However, the productive efficiency was only .45 meaning that 13% of the cases were dismissed (processing efficiency minus productive efficient). In 1985 there seemed to be an inordinate amount of cases being dismissed. One possible reason for the large number of dismissals in fiscal years 1984 and 1985 is the carry over of deferred adjudication cases. However, this practice has been discontinued since January 1984. Fiscal year 1985 was the last year where dismissals are confounded by deferred adjudication. However, the deferred adjudication issue does not explain the total number of dismissal for the statewide system. For a detailed summary of these indices summarized by county see Appendix A.

The low productive efficiency of the County Court system indicates that there is a problem in dealing with the large number of DWI cases in an efficient manner. This in turn, leads to the dismissal of cases and corresponding loss of deterrent effectiveness, caseload management problems, and increased costs.

## **1.1 Dismissals and Loss of Deterrent Effectiveness**

The Speedy trial law has been enacted to insure that justice is swift. After a case has been 90 or more days in the system there are several alternatives which may be used to dispose of the case. Plea bargaining and reduction to a lesser charge are some examples. If a case is delayed for long enough a third alternative is possible: dismissal of the case.

In their program for DWI in the 80's National Highway Traffic Safety Association (NHTSA) emphasizes seven points for a model program. The major impact of the system is to be a deterrent to the vast number of intoxicated and drunk drivers who will never be arrested. In the DWI system all elements have to function together for the public to be deterred (NHTSA 1985). When cases are dismissed the likelihood of deterrence is reduced. If the prosecution and adjudication parts of the DWI system develop weak links the general public is convinced that the system doesn't follow through on its threat.

Each case that is dismissed gives rise to the perception that "I can get away with it".

On the public level of law and the media of public communication (drinking and driving) is criminal behavior-easily perceived to be like other crimes; on the working level of daily routine it is mostly undetected. When drinking-driving becomes a matter of enforcement attention, its existence is ambiguous and a matter of policy and social construction, largely responded to by fine....As a matter of Law, drinking-driving is a criminal offense; as a matter of fact it is not more than a traffic violation (Gusfield, 1981, pp. 132-133)

Laws are passed, offenders are arrested, but cases are allowed to age which could result in dismissal the perception of a DWI is maintained as just another traffic ticket.

## **1.2 Caseloads Management in Courts**

Neubauer, Lipetz, Luskin, and Ryan (1981) state that court delay is the primary problem facing courts today. This delay causes difficulties in the

management of the cases through the system. Delay causes court dockets to be confused. Unless there is judicial restraint, cases can be delayed by various defense attorney's strategies. Prosecutors, ready for trial, may become frustrated because of delay. In addition to the frustration of those responsible for the adjudication, witnesses and other parties to the process become stale or, in some cases, unavailable. "Defendants and witnesses complain that repeated continuances enact an unfair penalty on their normal activities and ultimately discourage prosecution" (Neubauer et al., 1981, pg. 1).

### **1.3 Costs**

There are several costs assumed by the taxpayer associated with delay and dismissal of DWI cases. Each time a defendant appears in court, files have to be pulled and paperwork prepared for the process. In addition to the cost for support services, the salaries of the prosecutors and judges, there are the costs associated with the burden of having the case in the system. The longer the case is in process, the higher the cost to the taxpayer and the defendant.

### **1.4 Objective**

The objective of this study was to develop an efficient model for processing DWI cases through the adjudication system. This system is comprised of judges, court administrators, prosecutors, clerks, probation officers, etc.

Since the greatest percentage of cases are misdemeanor, this report pertains to the county court records. However, any conclusions regarding the processes of the county court could also be applied to the district court.

## 1.5 Review of Literature

The number of fatalities due to automobile accidents was 45,600 in 1985. According to the National Safety Council (NSC) alcohol was a factor in at least half of those fatal accidents (NSC, 1986). The relationship between alcohol and fatal accidents, although only recently receiving public attention, has been of concern to safety officials for some time.

National attention was focused on this issue when the Highway Safety Act of 1966 was passed. Originally this act was composed of thirteen standards focused on reducing automobile accidents and fatalities. One of these standards focused on reducing automobile accidents and fatalities, while another dealt with "Alcohol in Relation to Highway Safety".

The later established an Office of Alcohol Countermeasures within the National Highway Traffic Safety Administration (NHTSA) to manage all NHTSA alcohol programs. Its first priority was to conduct a three year nationwide alcohol demonstration project. There were thirty-five Alcohol Safety Action Projects (ASAP) conducted throughout the United States to address the overall problem of driving while intoxicated (DWI). The countermeasure areas addressed in these projects included: enforcement, treatment, education, adjudication, and public information.

Prior to ASAP there were two prevalent attitudes which caused the system problems. First, people in the responsible positions did not want to handle DWI cases. Second, administrators and jurors had the concept 'there but for the grace of God go I'.

"It was clear before the ASAP projects were started that the courts did not care much about drinking driving cases and that the highway safety profession knew little about the court system to control drinking drivers" (NHTSA, 1979, p. 19). The key issue became that of showing members of the court system how

to do things correctly (NHTSA, 1979). The approach used was to focus attention on three areas: improved procedures, extra resources, and training and motivation.

### **Results From National DWI Countermeasures**

Five years after the project started there were new and different adjudication procedures to handle DWI cases at some of the thirty-five sites.

The projects discovered two kinds of assistance to the judiciary that were particularly cost-effective. First, they found that investment in better records, better records systems, and the design of tracking systems is essential and productive. Each component of the criminal justice system keeps records for its own purposes, with the result that there is much incompleteness and duplication. The way the records system is set up can be changed economically. Second, the education of judges and prosecutors proved highly cost-effective. The education proved was only partly traditional (lectures, etc.) More important is engaging the judges in the management of the system by having them help to design its objectives and operations in cooperation with other agencies" (NHTSA, 1979, p. 21).

### **DWI Countermeasures in Texas**

Although Texas had one of the ASAP demonstration projects in San Antonio, additional work was required to bring the Texas DWI system into compliance with the changes that had proven beneficial during this ASAP period. These changes were identified in 1978:

- o a .10% per se law
- o provision allowing admission of BAC test refusal at trial
- o prohibition of deferred adjudication in DWI cases
- o authority for police officers to order blood tests
- o new procedures for reporting convictions or probations to DPS  
(i.e. the county clerk)
- o changes in implied consent license revocation procedures, videotaping suspects, and stiffened penalties (LBJ School, 1985).

As a result of several years of legislative effort the Texas DWI laws have been modified to include provisions for the above.

### **Problems in the System**

During the academic year 1984-85 the Lyndon B. Johnson School of Public Affairs conducted a survey of eight Texas counties to assess reactions of public officials to the various aspect of the new DWI law. Among the counties there was a diversity of anti-DWI programs. This diversity was in response to the complex, but unique, set of circumstances addressed in each county.

Some counties reported resource limitations in regards to videotaping and training of officials to carry out other testing. Five counties cited the judicial system as itself an obstacle to an effective DWI system. The fact that there is no central agency charged with collecting information on DWI arrests and convictions was cited as problem for prosecutors attempting to determine an offender's previous DWI convictions.

Each of the eight counties has a different record-keeping system. "This diversity may be due to individual personalities, long-time habits and procedures, or a lack of guidelines from the state..." (LBJ, 1985, p. xix). Other counties reported difficulties with their filing systems.

### **The Problem of Delay**

In "The State of the Judiciary Message" delivered to the 69th legislature on January 22, 1985 Chief Justice John L. Hill, Jr. summarized the problems in the trial courts. War must be declared on unnecessary court delay. Delay is a prime factor in perpetuating clogged dockets. The courts were challenged to take early control and maintain control of the case until it is out of the system (Texas Judicial Council, 1985).

## **Behavior of Attorneys and Judges**

A starting place for investigating court delay is an in-depth look at the formal and informal behavior of attorneys and judges as participants in the criminal justice process. For example, studies focused on how well courts are performing have not been based on an understanding of how courts work in a socio-political environment. A performance measurement system for courts should take into account the organizational structure and environmental characteristics of court organization (Cook et al., 1982). After observations are made, modification may be needed to reduce delay by adjusting prevailing practices (Stipes, 1980). Since there are many people involved in handling a DWI case, all aspects of the criminal justice system and its different policies need to be examined. "Adjudication systems are produced jointly by attitudes of the defense bar, the prosecution, and the judiciary. The worst systems are those run by the defense bar (though defense cooperation is always necessary)" (NHTSA, 1979, p. 22).

## **Different Management Philosophies**

There are differences in management philosophies of elected prosecutors concerning how certain cases should be handled. There is no standard system for handling DWI and other records in most counties and many times prosecutors and prosecutor's staffs have not been trained to establish efficient record-processing systems (Brackett, et al., 1985).

According to a study conducted by Neubauer et al. (1981), court delay is better seen as a symptom of a substantive, equitable and managerial problem that exists within a particular court system. He considers the lack of effective management a severe malady afflicting court systems now.

## Case and Court Characteristics

Case characteristics creating problems that affect the adjudication processing time are:

- o plea offers
- o disposition type
- o type of defense attorney
- o judge
- o number of motions
- o days defendant fails to appear
- o number of continuances
- o number of counts charged
- o strength of evidence
- o physical evidence
- o amount of time to locate witnesses/victims, etc. (Luskin, 1981).

Court characteristics creating problems that affect case processing time are:

- o number of new filings
- o number of cases on each judge's docket
- o average case processing time in preceding time period
- o number of cases pending
- o number of judges on the bench
- o change of calendaring system
- o other changes in court structure/operations (Luskin, 1981).

## **Legal Requirements**

There are many requirements for processing cases that are fundamental constitutional requirements. The required events are:

- o preliminary appearance/arraignment
- o determination of eligibility for pre-trial release
- o determination of probable cause
- o assignment of council (if defendant is indigent)
- o determination of guilt or innocence (by jury trial if desired by defendant)
- o the imposition of sanction on those found guilty.

Although there is some variation in timing of these events, they do impose an important degree of uniformity on task performance, providing a common base for developing comparative performance measures (Cook, p. 71).

## 2.0 APPROACH

Development of a model DWI processing system for use by Texas court agencies was based on an analysis of information generated primarily from a series of in-person interviews with individuals most familiar with the system as it now operates: representative of those court agencies in a sample of Texas counties. Analysis of the existing system was crucial to identifying the strengths and weaknesses of the system in effectively and efficiently processing DWI cases. It is hoped that the model system suggested in this report reflects the existing strengths of the system as presented by the many individuals who participated in the interviews and provides a means by which the weaknesses might be reduced. In addition to the County level interviews, information was also obtained from the Office of Court Administration and the District and County Prosecutors Association.

### 2.1 Sample Counties

Representatives from a total of five Texas counties were interviewed to provide information on DWI processing. The sample counties were selected from an initial group of thirteen counties that exhibited a wide range of values on a combination of three primary factors. These factors were:

- County size, based on both population and number of courts,
- Prosecuting office organization with regard to County and District Attorneys, and
- Ranking on a measure of DWI conviction rate efficiency based on 1984 and 1985 conviction data.

The final selection of the five counties was based on providing a range on several secondary criteria while still maintaining the broadest possible

variability on the primary factors. The secondary criteria included County experience with a Comprehensive Anti DWI Project, use of computerized systems, and, based on previous experience, the likelihood of broad cooperation with the project staff.

The five counties selected were: Brazos, Bell, Bexar, Travis and Victoria. Initially, Brazos County was to serve only for pilot testing the interview procedures and to familiarize project staff with the basic structure of DWI processing. The information generated in that pilot, however, proved to be sufficient to include in the overall data base employed in the analysis.

## **2.2 Agencies Contacted**

In each of the sample counties, agencies were contacted, and in most cases interviews conducted, that are involved in the entire gamut of DWI processing from initial arrest of a suspect to final disposition of a resolved case.

These agencies comprised:

- County Sheriff's Office/Local Police
- County and/or District Attorney,
- County and/or District Clerk,
- Court Administrative Office/Court Coordinator, and
- County Probation Department.

## **2.3 Interview Procedure**

Representatives of each of the agencies in each county were interviewed. The interview was structured around a description of the paperwork received, generated, modified, and disseminated concerning persons arrested for DWI. The description of the documentation involved in processing a DWI case by a particular agency usually produced an understanding of the procedures and

interagency relationships of each component of the DWI processing system. In most cases examples of documents, computer printouts, and forms used by each agency were obtained.

After completing the interviews in a given county, the project staff would then construct a flow chart reflecting the DWI process of that county. If additional information was required for this process, follow up telephone calls were made to the appropriate agency.

#### **2.4 Comparison of Counties**

After conducting the interviews and assembling the information concerning the DWI process, comparisons were made among the counties. These comparisons were made using three classes of data; organizational structure, paperwork or document utilization, and procedures used by the various organizational components to process the paperwork and consequently the DWI case. The determination of the most desirable, from productivity standpoint, outcome from these comparisons was based on several criteria. Some of these criteria are qualitative in nature but have a logical, if intuitive, basis. The last two criteria are the most objective. They are based on the past performance of a given county in processing DWI cases.

1. The fewer times, or the fewer number of people handling a case (or piece of paper, document, etc.), the more efficient and the lower the cost of processing.
2. The longer a case stays in the system, even if it is not being handled, the higher the cost, and the lower the probability of a productive disposition.
3. The sooner the opportunity for the defendant to enter a plea, the sooner the disposition and the lower the processing cost.

4. The DWI efficiency ratio.
5. The DWI productive efficiency ratio.

As a basis for comparison, high efficiency and productive efficiency ratios would indicate a streamlined operation in dealing with DWI cases. Comparing or contrasting the organization, procedures, and paperwork flow of counties with high ratios with those with low and by applying the other qualitative criteria, those characteristics that should be incorporated in a model DWI processing system can be identified.

## 3.0 RESULTS AND ANALYSIS

### 3.1 Results

As previously stated five counties were selected for inclusion in this study. Each county was visited and primary interviews were conducted with individuals that had the responsibility for processing the documents or otherwise participating in the adjudication of DWI cases. The results will be presented here as a flow charts with necessary explanations for each county. Each chart depicts the events, documents prompted by events, and agencies/organizations responsible for generating or processing documents, resulting from the handling of a DWI case. In a DWI case, the first event is always an arrest. Disposition documents indicate the completion of the case as far as this study is concerned. Disposition documents are generated whenever a plea is made and a judgement is given, when a trial is completed and a verdict is given, or when a case is dismissed for whatever reason. Since probation activities are usually part of the disposition activity they are not usually considered part of the process reviewed by this study.

#### 3.1.1 Events

The standard events for most counties are:

1. **Arrest** - Taking suspected offender in custody and maintaining control until he/she is passed to the jailer.
2. **Book-in Jail** - The actual processing of a suspected offender, including BAC testing, videotaping, and completion of required forms.
3. **Magistrate's Warning** - Information presented by a magistrate, to the accused concerning the charge against him and advising him of his rights.

4. **Arraignment** - A hearing before the presiding judge where the accused is given an opportunity to plead guilty or not guilty and to be assigned future court dates if applicable.
5. **Pre-trial Hearings (may be several)** - The defense is given an opportunity to file relative motions that may enable the defense to present a better case.
6. **Trial** - An appearance before a jury and/or judge when the prosecutor and defense presents evidence supporting their respective positions.
7. **Sentence Hearing** (This sometimes takes place at the trial event. If later, a pre-sentence investigation is sometimes requested - see discussion of probation below.)

Some counties have combined some of these while others have added other court events to the process.

### **3.1.2 Paper (Necessary Documents)**

Documents deemed necessary by prosecutors, judges, probation officers and others vary from county to county, but when most of documents are analyzed they appear to be similar in form and content to documents found in other counties under different names.

The following list of documents may be found as part of a misdemeanor DWI case. Felony cases require similar documentation but because of the Grand Jury process a few other documents are required. The study emphasis is on misdemeanor cases because that's where most of the DWI offenses are. These documents may occur singly or in combination with other documents on the list. The list is in order of general time sequence. This sequence may vary from county to county depending on the organization of the court system. It also may vary from case to case depending on the plea or other circumstances.

1. **Offense Report** - The report generated by the arresting officer that details the circumstances of the arrest and the elements necessary to show evidence of the offense.
2. **Evidence of Intoxication** - This may be any combination of documents or devices such as; the results of breath, blood, or urine tests, and/or videotape results.
3. **Statutory Warning (DIC 23/24)** - Warning of consequences of refusing to give a breath, blood, or urine sample.
4. **Prior Criminal History** - This may be any combination of reports such as those from Texas Crime Information Center (TCIC), the National Crime Information Center (NCIC), the CCH and Driver License Check from the Department of Public Safety.
5. **Bail Bond** - A written promise to appear guaranteed by a cash deposit. A bond is always set by the appropriate authority although it may not always be used by the defendant. This is usually only true when the defendant can't meet the bond requirements. Bond amounts are usually established on a sliding scale that reflects the severity of the offense. For example the bond for the first DWI may be \$250.00 cash and the second offense may be \$500.00. Felony offenses, the third and subsequent offenses seems to require a review by a magistrate where misdemeanor or first or second offense are pre-set and can be issued by the Sheriff or his designee.
6. **Magistrate's Warning** - Information presented to the accused concerning the charge against him and advising him of his rights. In some counties a form has been developed to record this warning. In other counties it is a notation on the information presented to the magistrate and/or in the bond set by the magistrate.

7. **Complaint** - An affidavit of offense sworn to before a magistrate or district or county attorney.
8. **Information** - Written statement filed with the Clerk's office on behalf of the state by the District or County Attorney charging the defendant with an offense.
9. **Warrant or Capias** - A written order or writ authorizing the arrest of a person accused of an offense.
10. **Setting Notices** - Written notices of the date and time of required court appearances. These are generated by the court coordinator or county clerk; depending on the county.

Setting notices may be generated and disseminated several times during the judicial process. These include but are not limited to notices for:

- a. Arrangement
  - b. Pre-trial (There may be several of these.)
  - c. Trial (Bench or Jury)
  - d. Jury selection
  - e. Sentence
  - f. Plea
11. **Pre-trial Motions** - Written requests filed seven days before the pre-trial hearing. These requests, and the rulings on them become part of the trial record.

Pre-trial motions may be generated by the defense or the prosecution. The motions include but are not limited to motions:

- a. To suppress
- b. To quash
- c. To dismiss

- d. To withdraw
- e. In limine
- f. For continuance
- g. For discrepancy

12. **Judgement and Sentence** - Written declaration of the court, signed by the judge, showing the conviction or acquittal of the defendant. It includes the conditions of the sentence and is recorded by the clerk.

The standard documents appear on the flow-chart as:

1. Offense documentation - These are all the documents used to establish the offense, these documents vary from county to county.
2. Bond (see previous definition)
3. Complaint and Information - although separate documents they are usually filed with the clerk at the same time. The complaint must be logged in first.
4. Disposition documents - will include the judgement and sentence documents as well as documents concerning dismissals. Some pre-trial motion initiate disposition and are included here.

Most counties have internal case review or record-keeping documents that are not identified here. There are also other documents used by agencies in some counties to inform defendants, prosecutors, police agencies, etc. of case status, and/or the intent of action to be taken (these include setting notices and pre-trial motions). Frequent communications occur between prosecutors and defense attorneys/defendants relative to plea bargaining and other concerns that do not have a substantive impact on the case process. Pre-trial motions can cause serious delays and should be reviewed when developing court rules or other policies that will impact the adjudication process.

### 3.1.3 Agencies/Organizations

The standard agencies/organizations involved in a misdemeanor case are:

1. **Law Enforcement Agencies** - this includes the local police department, the sheriff's office and Texas Department of Public Safety Troopers assigned to the area. These agencies generate most of the offense documents.
2. **Prosecutor** - represents the state in all criminal cases in county or district courts. Three of the sample counties have a county and district attorney and two have District attorneys with felony and misdemeanor prosecution sections.
3. **Clerks** - receives and files all papers and issues all process in criminal proceedings. Some of these responsibilities have been assumed by the court coordinator in some counties.
4. **Court Coordinator** - most set the courts dockets, insures that each defendant has an attorney if desired and other assignments as dictated by the judge. Four of the counties in the sample had court coordinators while the county clerk fulfilled this responsibility in one county.
5. **Court** - responsible for hearing and passing judgement on evidence presented relative to the commission of an offense.

All counties have probation departments but most courts do not interact with probation until after a guilty plea or conviction. At that time a probation officer may be asked to perform a pre-sentence-investigation to guide the judge in his decision-making process. Technically this happens after the disposition of the case has occurred. Brazos county has accused offenders apply for probation as soon as possible after they receive their magistrates'

warning. This aids prosecutors in deciding whether a case should be enhanced from a misdemeanor to a felony.

#### **3.1.4 BELL COUNTY**

The flow chart on page 23 (Figure 1) represents the system currently in place in Bell county. Bell County has the standard events, document requirements and agency involvement common to most other counties. The procedural exception is that the arresting officers generate the complaint. In most other counties the prosecuting attorney generates the complaint based on the offense report and/or a probable cause statement provided by the police agency. The prosecutors in Bell County commented that all complaints must be reviewed and many have to be re-done, especially as to form and content, to insure that available evidence is presented correctly.

Several of the agencies involved request separate NCIC, TCIC, prior criminal histories and driver license checks from the DPS. This seems to be unnecessary if this documentation is part of the arresting officers offense report.

Probation personnel are occasionally requested to conduct a pre-sentence investigation after a guilty plea or guilty verdict is given by a jury. Since this is post disposition it is not included in the chart.

#### **3.1.5 BEXAR COUNTY**

The flow chart on page 24 (Figure 2) represents the system currently in place in Bexar County. Bexar County has the standard events, document requirements, and agency involvement common across most other counties but also has some additions and exceptions. One procedural exception is that the police agencies generate an "affidavit for warrant arrest". Bexar County also has a

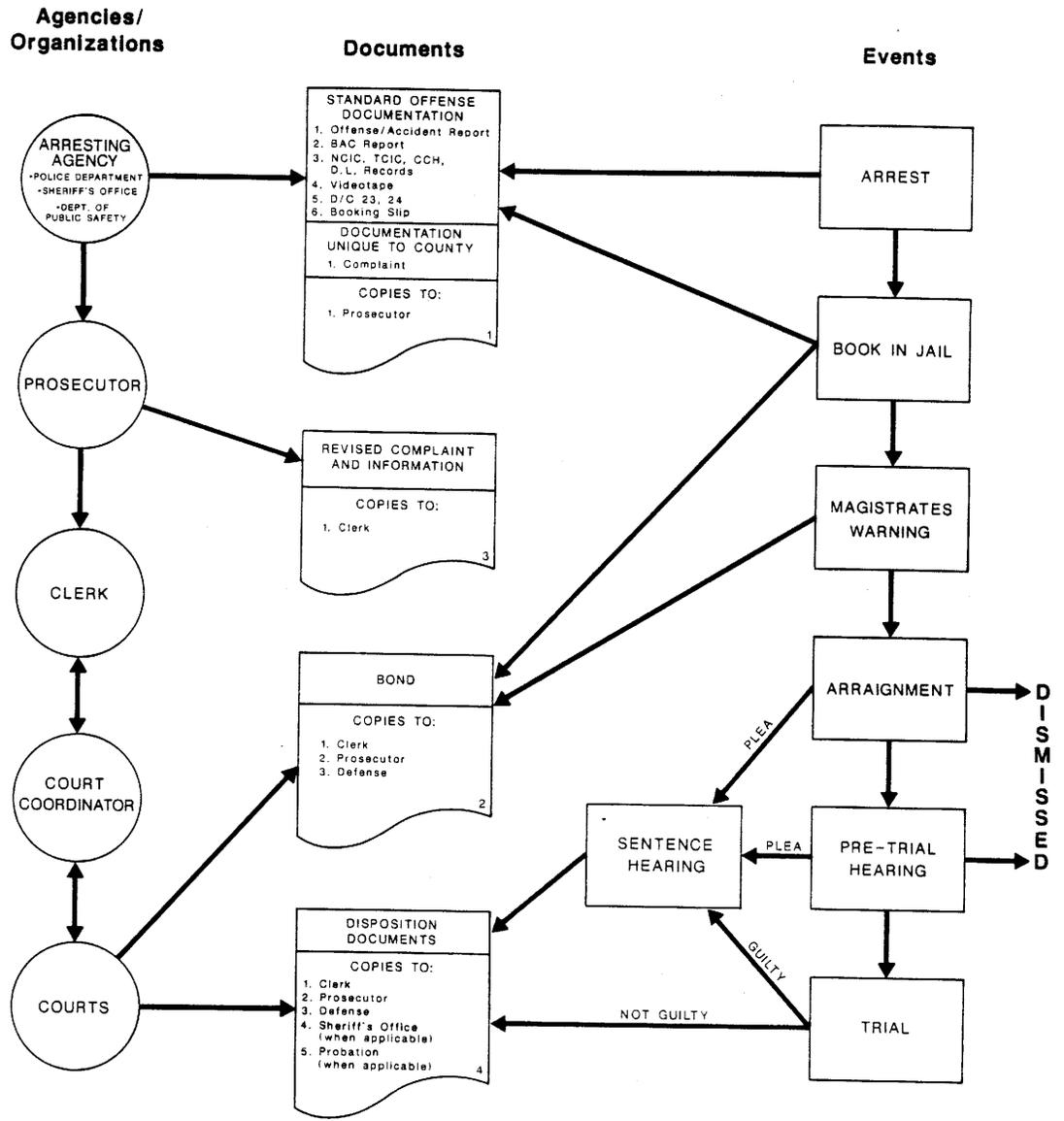


Figure 1 BELL COUNTY

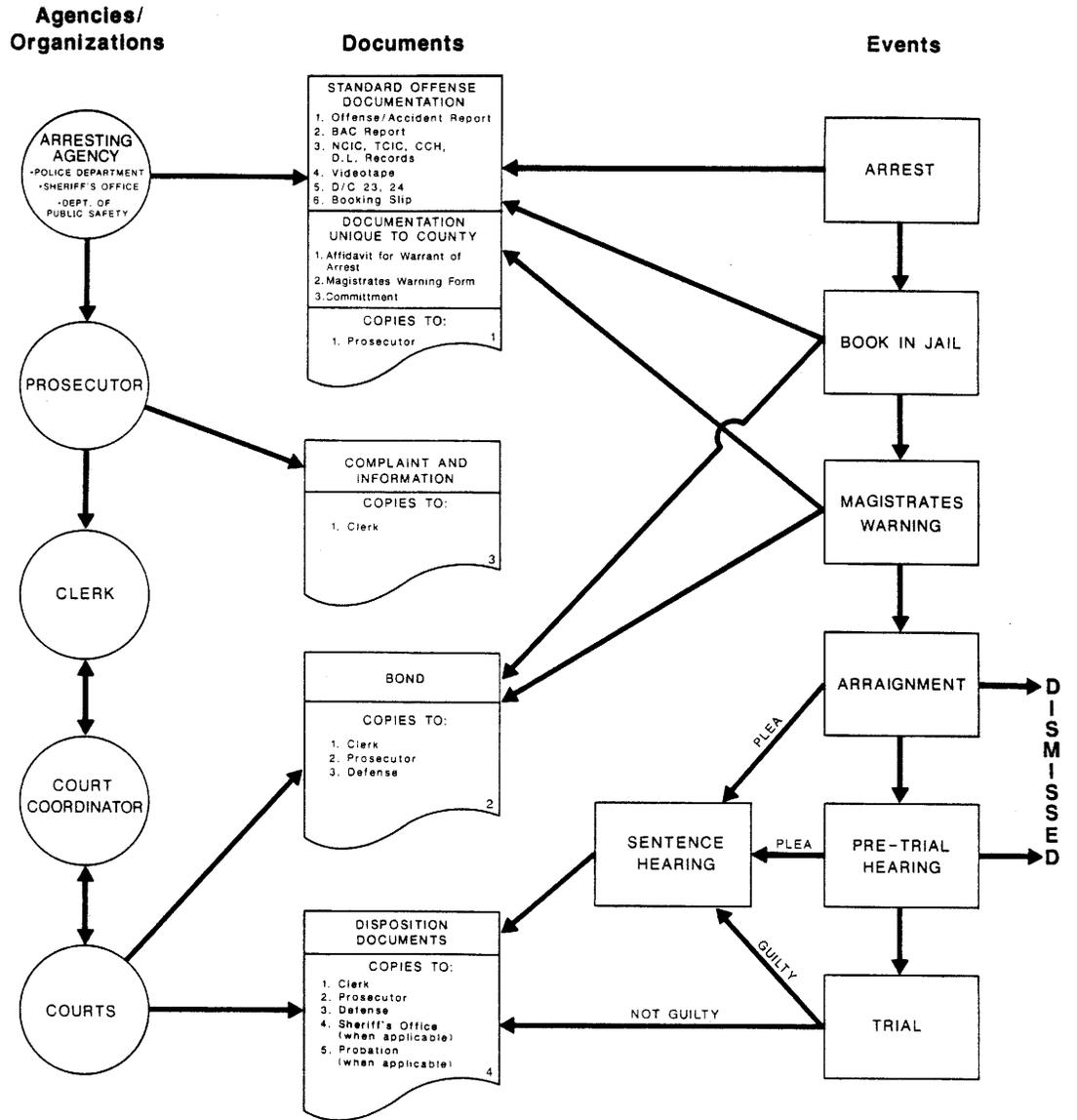


Figure 2 BEXAR COUNTY

form recording the magistrates warning separate from the bond. In addition, a commitment form is generated by jail personnel and signed by the arresting officer. This document is also referred to as a complaint but is not the complaint filed by the District attorney's office with the county clerk.

One of Bexar County's seven courts, schedules trials directly after arraignment without pre-trial hearings. This court has fewer backlogged cases than other courts in the county.

Probation personnel are occasionally asked to conduct pre-sentence-investigation and other reports by a judge.

### **3.1.6 BRAZOS COUNTY**

The flow chart on page 26 (Figure 3) represents the system currently in place in Brazos County. As can be seen, Brazos County has the standard events, document requirements and agency involvement common across most other counties. One exception is that the police generate a "Probable Cause Statement" which is used as documentation at the magistrate's warning and is the document that alerts the county attorney that an offense has been committed. The supporting offense report follows a few days later.

Another exception is that all accused DWI offenders are directed to apply for probation as soon as they have received the magistrate's warning. This application prompts probation personnel to conduct a pre-sentence-investigation early in the process. The reason stated for this is that this investigation provides prior offense verification early so that decisions concerning enhancement of the offense from misdemeanor to felony can be made.

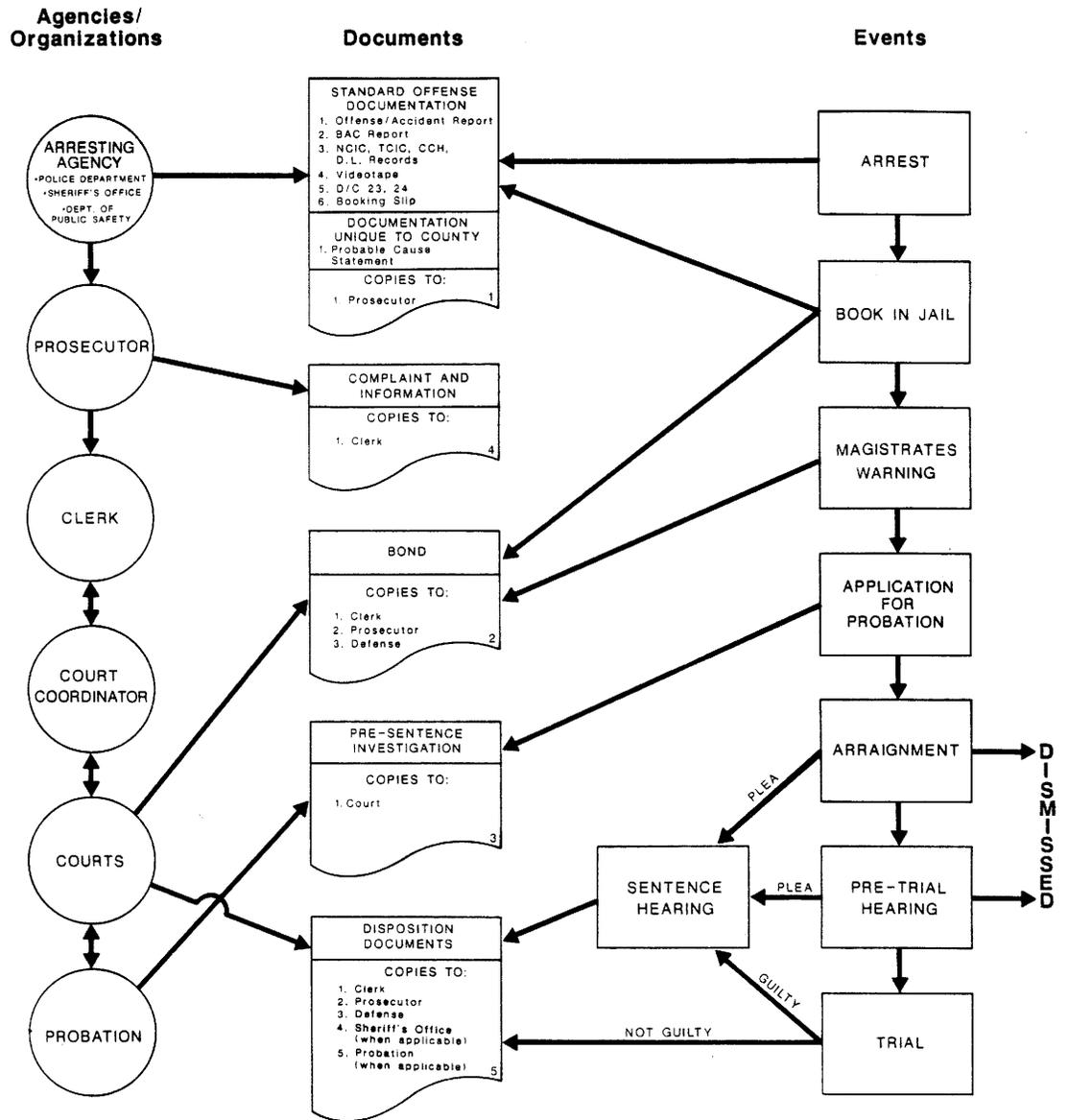


Figure 3 BRAZOS COUNTY

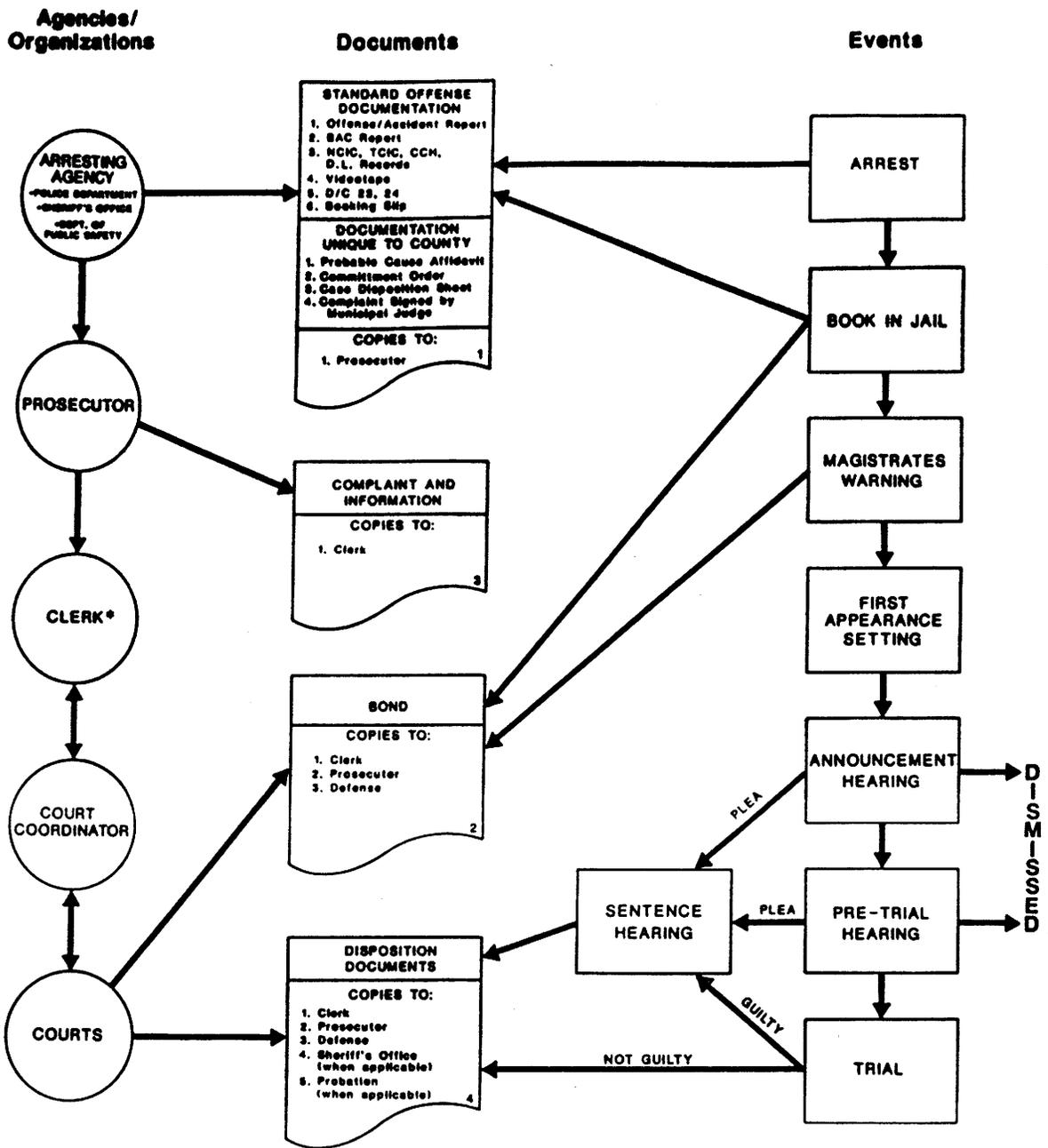
### 3.1.7 TRAVIS COUNTY

The flow chart on page 28 (Figure 4) represents the system currently in place in Travis County. As can be seen Travis County does not have the standard events shown by most counties. They have a First Appearance Setting and an Announcement Hearing that does not necessarily require the appearance of the defendant. The defendant's attorney which all DWI offenders in this county must have, may appear or call the court coordinator and request a plea (sentence) hearing or a pre-trial/trial. One judge combines the pre-trial with the trial, reducing court appearances. Anytime during and after the announcement hearing a defendant may plead out. Pleas are not taken before the defendant has an attorney or before the announcement hearing.

The flow of each case seems to be dependant on actions taken by the defense rather than the prosecution. The defense may ask for motions of continuance to give the attorney time to collect his fee before the case is disposed.

One exception to the standard documents generated is a probable cause affidavit that is received by the prosecutor several days prior to the offense report package. The jail issues a commitment order that is a record of the confinement of a DWI offender. In addition, a case disposition sheet is generated and distributed to inform the agency and attorneys involved concerning the status of the case. Finally a complaint signed by the municipal judge is forwarded to the county attorney. The complaint and information is based on this documentation plus the offense report.

The agencies involved are approximately the same as most counties. It seems that the county clerk is responsible for maintaining all records even during a trial while in counties with court coordinator records are maintained by the coordinators during the trial or other proceedings. This means a trip to and from the court for the county clerk deputy and the court coordinator



\*County Clerk delivers and picks up records every time the court meets. Court Coordinators evidently do not maintain an active case file.

Figure 5 TRAVIS COUNTY

every time a case is in court for a hearing.

Normally probation is not involved until after sentencing. They may be asked to do a pre-sentence investigations to guide the judge in setting probation conditions.

### **3.1.8 VICTORIA COUNTY**

The flow chart on page 30 (Figure 5) represents the system in place in Victoria County. As can be seen Victoria does not have the standard events shown by most counties. They have compressed the magistrates hearing, arraignment and sentencing hearing for those individuals that want to plead out. Whenever a defendant decides to plea or when a guilty verdict is reached by a judge or jury the judge is ready to make judgement and set sentence immediately without a separate hearing.

Victoria County has the standard paper flow requirements as is reflected by most counties. They do not have a separate court coordination program. The county clerk fills the roll of court coordinator. As a result fewer agencies are involved thus documents are handled fewer times.

Victoria has a 60 day processing goal for all misdemeanor DWI cases. They seem to be very efficient in reaching this goal. This is evidently accomplished by implementation of court rules. These court rules also limit the number of delays caused by pre-trial motions as well as enforcing the 60 day case process limits.

## **3.2 ANALYSIS**

### **3.2.1 Organization**

Several different agencies comprise the overall organization of each

**Agencies/  
Organizations**

**Documents**

**Events**

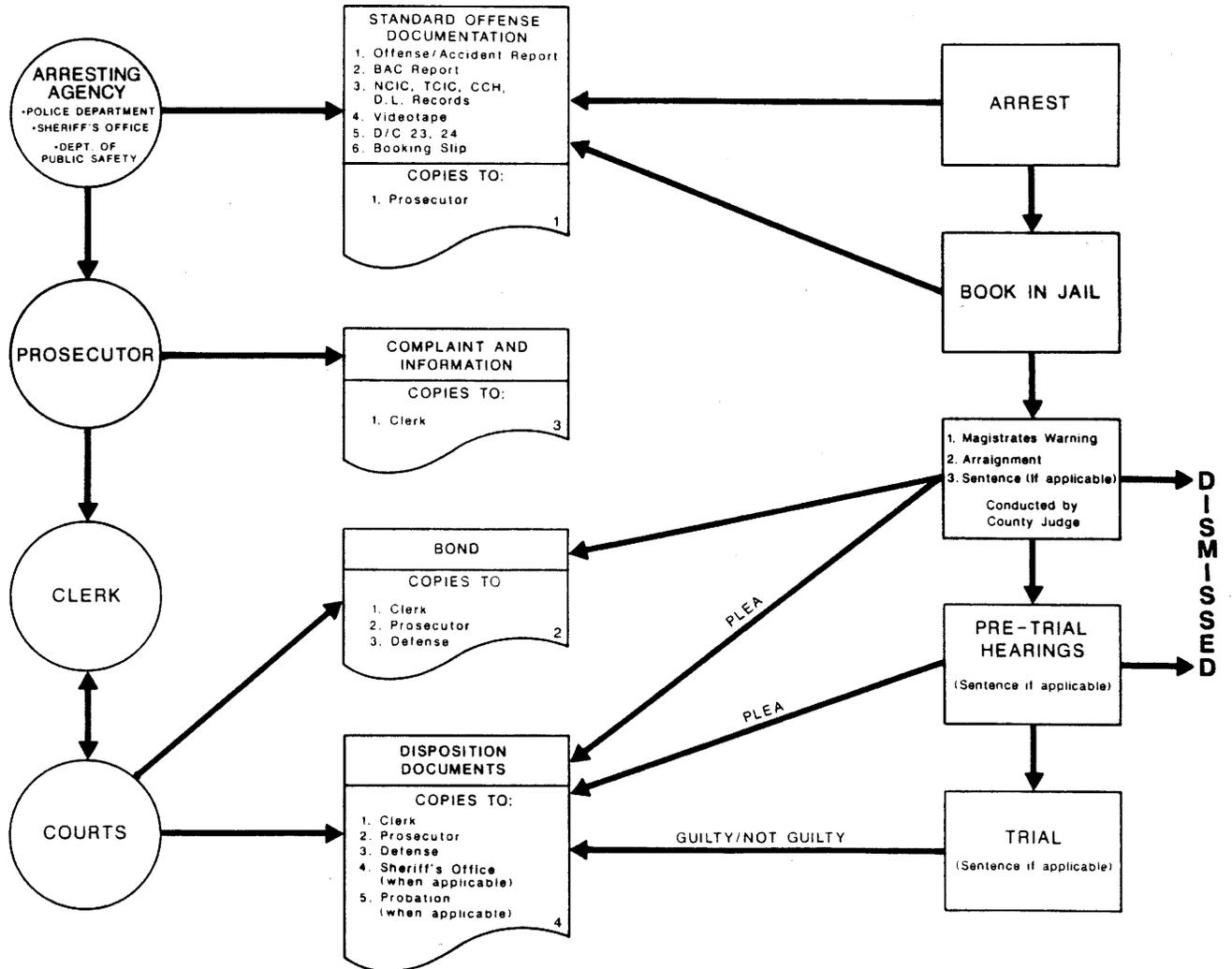


Figure 5 VICTORIA COUNTY

county's criminal justice system. The existence of the agencies in a county is determined by statute and by the electorate. They are organized internally to handle the work that comes to them or that they are responsible for generating. As in many organizations the interpretation of required work is driven by tradition (we've always done it this way), statutes passed by the legislature (the Texas Code of Criminal Procedures (CCP), the Texas Penal Code (PC)), past experience of managers (in the military, we did it this way), guidelines established by the governing body of the county, and the process requirements of the managers of organizational components in the system (judges, prosecutors, etc.).

The first organizational components to impact the criminal justice system in DWI cases are the various police agencies in a county. The organization of these agencies varies somewhat across jurisdictions but all are more structured than most other agencies involved. The valid arrest, testimony and evidence collection thoroughness of these agencies drives the total DWI prosecution process. If the police agency does not do its job the whole case may fail. It was observed in the course of this study that the police agencies in the five counties sampled seemed to be efficient in all the critical areas named. Since the paperwork generated and evidence collected are dictated by what the prosecutor and courts demand for a case to be considered for inclusion in the five counties sampled seemed to be efficient in all the critical areas named. Since the paperwork generated and evidence collected are dictated by what the prosecutor and courts demand for a case to be considered for inclusion in the criminal justice process, police agencies have definite guidelines to follow in making a DWI case. This provides for consistency in the strength of cases brought to prosecutors for review and insures that most cases have all the elements needed to prosecute successfully.

In the counties sampled, police agencies forwarded the required paperwork and evidence to the appropriate prosecutor. Of the five counties, two had criminal district attorneys with felony and misdemeanors prosecution sections and three had district attorneys to prosecute felony cases and county attorneys to prosecute misdemeanor cases. Within each prosecutors office, work is generally organized to comply with the statutes, the wishes, or perceived wishes of the elected prosecutor, some of the more experienced employees in the office, and the judges currently presiding. In several of the counties the prosecutor's offices have assumed the responsibility for generating some of the paperwork normally prepared by other agencies in the system. In addition, some of the prosecutors offices require forms from police agencies that have no basis in statute or court decisions. These documents do contribute to how work is organized and may be an extra step that is not necessary.

After the prosecutors office reviews a case for all the elements required to prosecute, the required documents for filing are sent on the District Clerk (in felony cases) or the County Clerk in (misdemeanor cases). The organizational structure within the clerks offices is very dependent on the desires of the judges currently on the bench, while all clerks offices serve as a repository for all required documents in a case, one county clerk has also assumed the responsibility of not only documenting docket calls or court dates but sets court appearance dates according to pre-arranged schedules. Other counties have passed some of the document generation responsibility to other agencies. For example in one county the probation department completes the forms for persons that are to have their license suspended and/or attend DWI schools. These variances in paperwork responsibility impact the clerks operational organizations. In the four counties where the clerk does not set the court dates, an office of court coordinator exists for each court in the

county.

Court coordinators may also serve as clerical support for the judge of a given court or if the case load is large enough the court coordinator may primarily be responsible for scheduling court dates. This may include generating and disseminating setting notices to all concerned parties, coordinating time conflicts between the judges, prosecutors, and defense attorneys, insuring all defendants are represented by council if desired and other tasks as may be assigned by the judge. It seems the primary ingredient for a successful court coordinator is the ability to develop support or cooperation between all concerned parties.

In summary, the required paper-flow or paper that is perceived to be required seems to have an impact on the organization structure implemented within each organization. In addition, for paper to flow efficiently all involved organizations must strive to work together to accomplish the goal of justice.

### **3.2.2 Procedure**

To be efficient each agency in the county must cooperate with all other agencies in the county. In addition, each agency must be consistent in applying the procedures it uses to process paper and people through the system. When cooperation and consistency are missing, there is no uniformity with other counties and as a result it is very difficult to prosecute offenders on subsequent offenses.

Generally procedures are defined by statute and by incumbents in the prosecutors offices or courts. The primary procedural guide in each county is some form of court rules. In several counties the rules weren't written down, but were known to all the components of the system. In other counties court

rules were formally developed but served only as a reference which may or may not be followed.

It seems that all courts have some form of court rules delineating what is acceptable procedure in most expected situations. One county has established court rules for processing all DWI cases in 60 days, and each judge in the county and the prosecutors have agreed to abide by the rules. Defense attorneys have learned to accept these rules and are complying with them. This county has a consistently high efficiency ratio. Another county has a 200 day maximum set but it is inconsistently applied by the judges in the county. As a result, defense attorneys evidently do not seem to take the time limit seriously.

Most court rules are very general and do not have specific deadlines for processing cases. Court rules that provide definite time lines for case flow through the system and state the court's position on plea bargain agreements are the most effective when all the courts, prosecutors and defense attorneys accept them as a fact of life.

In some court rules, limits have been placed on the number of pre-trial hearings that can be held. One county has added hearings to insure that all defendants have attorneys. Most of the sample counties only required attorneys for felony offenses. It was very obvious that counties with realistic court rules were more efficient.

The office of Court Administrations is in the process of developing model court rules. It is anticipated that this model will aid in the processing DWI cases as well as other cases efficiently.

### **3.2.3 Paper Process**

There are some areas of the paper process that are not directly impacted by

court rules or statutes. Paper is generated, processed and stored by specific agencies in the system. With the introduction of computers to most county operations, the capability of streamlining the record-keeping process and case processing procedures are at hand. All five of the counties sampled have computerized at least part of their system. Most have a long way to go in taking full advantage of this capability. It is hoped that the case load management systems being developed by the Office of Court Administration and the Safety and Traffic Operations of the State Department of Highways and Public Transportation will expedite the use of computers in the DWI case process.

These systems hopefully will provide the necessary training and support documentation needed to encourage their implementation. The implementation of these systems should improve the productivity of all involved personnel as well as speeding up the process for the defendant. These systems have not been available for review and as a result limitations to the programs have not been identified. Hopefully the system designers have anticipated possible problems or limitations and addressed them in the programs.

#### **3.2.4 Effectiveness**

Table 3.1 on page 36 presents relevant information on how effective the sample counties were in processing DWI cases for the year 1984, 1985, and 1986. Processing efficiency and productive efficiency are defined in section 1.1. As can be seen, Victoria county had the highest productive efficiency across all three years while Brazos county had the lowest productive efficiency. The other three counties range about midway in between.

DWI COURT ACTIVITY - 1984 to 1986

YEAR: 1986

COUNTY	CASES PENDING	CASES DISPOSED	CASES DISMISSED	PROCESSING EFFICIENCY	PRODUCTIVE EFFICIENCY	PERCENT OF ALL CASES DISPOSED
Bell	1789	2635	130	.6	.57	31.58
Bexar	7424	9798	550	.57	.54	22.45
Brazos	1323	649	83	.33	.29	44.2
Travis	5480	4592	533	.46	.4	32.09
Victoria	251	935	50	.79	.75	31.86
Statewide	108778	141315	17186	.57	.54	25.58

YEAR: 1985

COUNTY	CASES PENDING	CASES DISPOSED	CASES DISMISSED	EFFICIENCY	PRODUCTIVE EFFICIENCY	PERCENT OF ALL CASES DISPOSED
Bell	1607	2285	314	.59	.51	30.93
Bexar	6604	6766	765	.51	.45	23.33
Brazos	1093	1065	333	.49	.34	40.09
Travis	4579	4430	514	.49	.43	33.2
Victoria	118	741	42	.86	.81	29.02
Statewide	108725	150766	34464 (18340)*	.58	.45	29.95

YEAR: 1984

COUNTY	CASES PENDING	CASES DISPOSED	CASES DISMISSED	EFFICIENCY	PRODUCTIVE EFFICIENCY	PERCENT OF ALL CASES DISPOSED
Bell	1813	2750	220	.6	.55	34.16
Bexar	5645	5573	791	.5	.43	11.92
Brazos	1151	852	215	.43	.32	49.44
Travis	3955	4182	663	.51	.43	28.1
Victoria	30	773	78	.96	.87	32.26
Statewide	114560	149930	43893 (16772)*	.57	.40	29.21

\*Number of dismissed cases after removing those dismissed after deferred adjudication.

### 3.3 MODEL SYSTEM

The flow chart on page 38 (Figure 6) represents a model system developed after analyzing the systems in place in the sample counties. This model attempts to satisfy all the legal requirements for processing a misdemeanor DWI case, while minimizing the time required for processing. As can be seen, the model has four primary events, less paperwork and four agencies/organizations generating or processing paperwork. Of course there are several events that could happen that would have to be added to this model. For example if a person accused of DWI pleads not guilty and subsequently asks for and is granted a continuance at the pre-trial/trial event, would become at least two separate events.

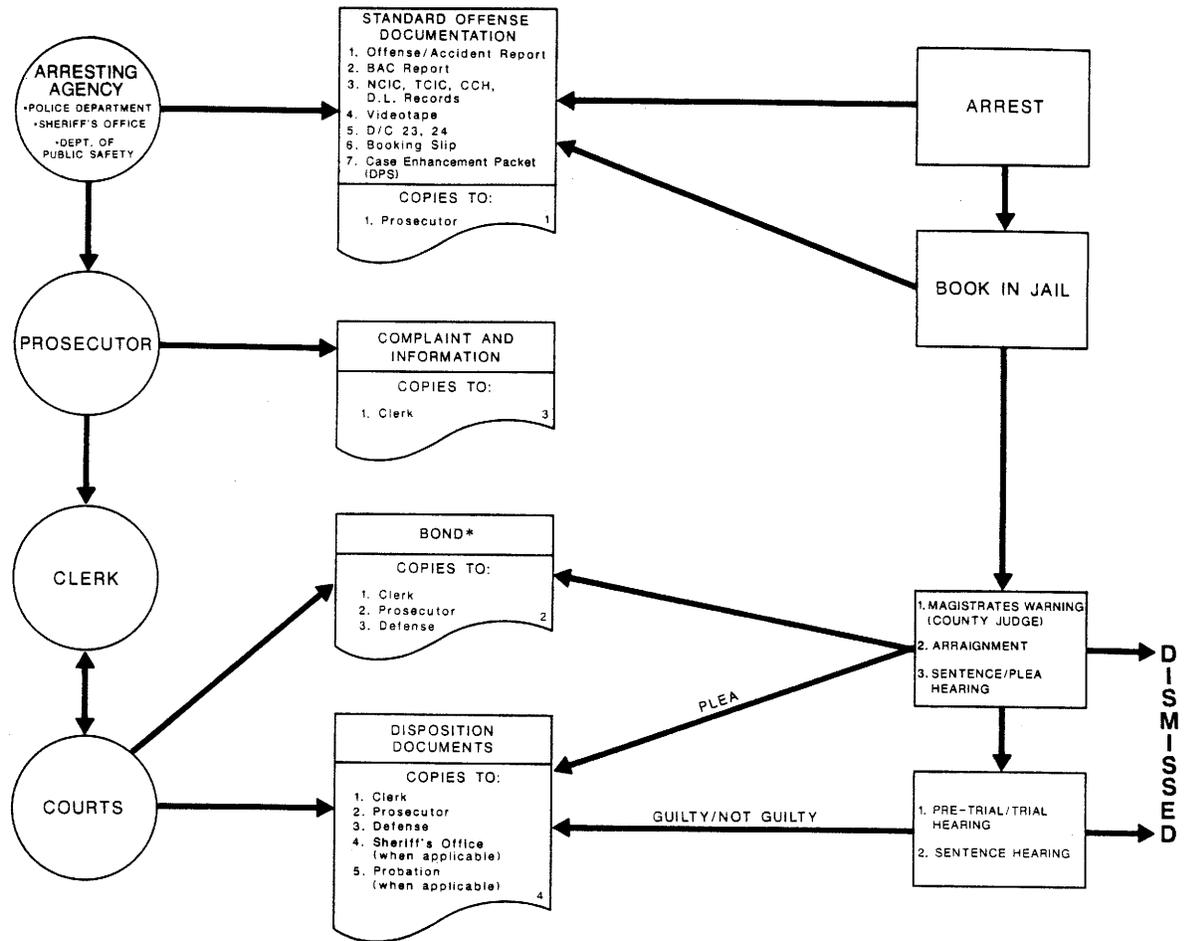
It could also happen that, for good cause, more than one delaying pre-trial motion could be granted. If this happened, there would be several pre-trial events in the system. Since, as previous studies have shown, 90 to 95 percent of DWI offenders plead guilty at or shortly after the magistrates warning/arraignment, only five to ten percent would go through the pre-trial/trial event.

The model is a very simplistic starting point and is not to be considered to be the solution for every county in every situation. This model should serve as a basis for evaluating existing systems for efficiency and for serving the cause of justice. One point made by one county clerk was that "when efficiency is sought through compressed activities the course of justice may be over-looked by not providing the offender ample opportunities to develop a defense."

**Agencies/  
Organizations**

**Documents**

**Events**



\*Bond may be set prior to complaint and information filing if arrest occurs on weekend.

Figure 6 MODEL

## 4.0 CONCLUSIONS AND RECOMMENDATIONS

### 4.1 Conclusions

The analysis of the information obtained during the interviews conducted with personnel associated with the DWI adjudication process led to the following conclusions:

#### A. Paperwork/Documentation

Previous experience with DWI records kept by Offices of County and District Attorneys led to the initial supposition that paperwork and case tracking problems were the primary cause of delays in prosecution of cases. However, when the DWI adjudication process was examined in a larger sense, it became apparent that paper flow and document control contributed only tangentially to case processing delays.

Inefficient handling of paperwork, such as delays in completion and duplication of effort, appeared to be a consequence rather than a cause of procedural and processing problems. These procedural problems included diffused and overlapping responsibility for the initiation, completion, distribution of documents, no centralized document control entity, and lack of standardization in required documents.

None of the counties, where interviews were conducted, had automated record keeping systems that covered a case from arrest to disposition. The automated systems encountered were partial in nature usually linking one or two offices at most. In several counties, different offices had their own part of the paperwork system automated, but data exchange was accomplished by print out rather than electronically.

Currently, two organizations, the Office of Court Administration and the

Safety and Traffic Operations Section of the SDHPT, are working on automated record keeping and case management and tracking systems. These systems will need to be extremely flexible to accommodate the procedural differences in the way cases are handled in various counties. Until these difference are resolved, it is unlikely that automating records will improve the efficiency of processing cases.

#### B. Organization

The components of the organization that process DWI cases, from peace officer to probation officer, are created by statute. The statues, however, define only in a general sense the responsibilities of each component, and provide little guidance concerning the relationships among components. Thus, although the components of the system vary little from county to county, the duties performed by each can be quite different. Since it is unlikely that statutes governing the components will be changed, for purposes of improving productivity, they must be assumed to be fixed or constant.

#### C. Procedures

The interaction of the components of the DWI processing system are defined by the procedures, both formal and informal, followed in dealing with cases. These procedures determine which component of the system is responsible for which actions and documents as well as establish the sequence of events.

The analysis of the procedures used in the counties studied suggested that the following circumstances interfered with the efficient processing of DWI cases:

1. Lax court rules - court rules that permit numerous continuances and other motions delay cases being processed.

2. Numerous hearings - procedural requirements for separate hearings for each step in the adjudication process protracts the disposition time of cases.
3. Lack of centralized document control and scheduling - with each component of the organization establishing and controlling its own document flow, redundancies are created. Delays occur when the processing schedule of one component does not mesh properly with the schedule of others.

#### **4.2 Recommendations**

The following recommendations are derived from the conclusions and the experience and information gained from the interviews conducted in the five counties:

- A. That the results of this study be presented to professional organizations of judges and county/district attorneys.
- B. That assistance be provided to one or more counties wishing to implement the model DWI processing system.
- C. That an evaluation of DWI processing efficiency be conducted for those counties implementing the model system.
- D. That the efficiency and productive efficiency ratios developed in this study be used to evaluate DWI resource allocation priorities.
- E. That prosecutors be encouraged to review all documents they generate and receive, to be sure there is a good reason for including them in the process.
- F. That counties not presently set-up for computerization be encouraged to consider this alternative for processing cases.
- G. That efficient court rules be implemented by each county.

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**DWI  
EFFICIENCY RATIOS - 1985**

COUNTY	PENDING	ALL DISP.	DISM.	EFF.	PRODU EF
<b>1984</b>					
HARRIS	12090	24788	4523	.67	.5
<b>1985</b>					
HARRIS	8788	25572	5023	.74	.6
<b>1986</b>					
HARRIS	8621	22238	1870	.72	.6

