Abstract
This paper presents findings from the first phase of a major study that is investigating problems in the criminal DWI system in the United States. The paper focuses on the enforcement phase and examines priority problems and solutions identified by police officers nationwide in the detection and apprehension of repeat offenders.

Introduction
Substantial declines in alcohol-related fatalities recorded in the 1980s and early 1990s have not continued. Indeed, it now appears that these earlier gains are being eroded as the number of people killed in alcohol-related fatalities in the U.S. increased in both 2000 and 2001 (1)(2). These recent changes have generated considerable concern and one by-product will likely be the development and implementation of more laws and regulations. Although such continued expansion might be warranted, it is important to consider as well the need to make the existing laws and regulations work more efficiently and effectively. Recent years have witnessed a remarkable growth in legislation addressing impaired driving in general, and the repeat offender in particular. As a result, the DWI system has become incredibly complex and cumbersome. Consequently, its effectiveness is being compromised at all levels, particularly by repeat offenders who are familiar with the system and routinely exploit its loopholes and inconsistencies to avoid identification and sanctioning. The purpose of the present study is to identify priority problems and practical, cost-effective solutions to make the DWI system more effective and efficient (3)(4).

Methods
A literature review was conducted to identify a broad spectrum of problems and solutions pertaining to DWI enforcement. The problems identified in the literature were collated and expanded based on the authors’ knowledge of the system and condensed to reduce redundancy and overlap. This process yielded a list of key problems that affect the detection and apprehension of hard core drinking drivers.

The list of problems was reviewed with front-line police officers in workshops held in six states representing several regions of the country. They were asked to verify, expand and prioritize the problem list and recommend practical solutions. A total of 32 officers representing 20 districts participated in the workshops.
To increase the generality of the findings from the workshops and obtain further quantitative information on such things as the frequency with which such problems were encountered, a survey of 2,731 officers in 16 states was conducted with the assistance of the International Association of Chiefs of Police.

**Results**

The survey revealed nine problems that impede the detection and apprehension of repeat offenders. In order of priority, they are: paperwork, test refusal, detection, incomplete evidence, medical cooperation, failure to appear, access to records, testimony, and resources. Several of these are described in greater detail below.

**Paperwork.** Overwhelming paperwork is the most significant problem identified by police officers. It takes an average of 2-3 hours to make a typical DWI arrest in the U.S. due to the multitude of forms that officers must complete. Virtually no other criminal charge requires as much documentation. It is not uncommon for officers to complete more than 15 separate forms and 60% of officers report that extensive paperwork even discourages them from making DWI arrests. In light of this, it is not surprising that only 50% of DWI investigations result in an arrest.

The consequences of the paperwork burden are considerable. Time spent on paperwork is time taken away from direct enforcement and the general deterrence that arises from officers being on the road. Moreover, errors or omissions are more likely to occur in the paperwork due to the repetitive and detailed nature of information required on most forms, and the competing demands for police service which means officers often do not have time to complete forms in sufficient detail.

To rectify this problem, almost 90% of officers support streamlining, simplifying, and standardizing the paperwork to make it more manageable. This is a realistic goal as some agencies have already reduced the paperwork to only a few forms that can be completed in half an hour. As well, officers want broader use of technological applications such as on-board computers and mag-stripe readers to further reduce processing time and eliminate errors. Law enforcement agencies are increasingly automating paperwork so that repetitive information can be carried forward to the appropriate fields and forms are strategically linked. This automation saves considerable time and reports can easily be uploaded to master files.

**Test Refusal.** Officers report that they encounter refusal to cooperate with some aspect of the DWI investigation – e.g., answering questions, performing field sobriety tests (SFSTs), taking a preliminary breath test (PBT), or submitting to a chemical test – in one-third of the cases. Chemical test refusal rates vary substantially across the country with jurisdictions reporting refusals rates ranging from 2-71% (6). Officers in this study report similar refusal rates. Moreover, 95% of officers say that refusals are more common among repeat offenders.

The variation in test refusal rates appears to be a function of several factors, the most important of which is the consequences of refusing. In most states, the consequences for chemical test refusal are nominal and only a few states impose criminal penalties for refusal (7).
By refusing testing, an offender prevents police from gathering critical evidence to support a DWI charge and a potential conviction. This means that sanctions are avoided, and of considerable importance, the suspect will not be identified as a repeat offender if arrested subsequently.

To overcome this problem, officers recommend making test refusal a criminal offense. Currently, fewer than ten jurisdictions in the U.S. have done so (8). Over half of the officers surveyed also support increasing the penalties for this behaviour so they are at least equivalent to those imposed for a DWI conviction. In many jurisdictions, the penalties for refusal are considerably less than the penalties for a DWI conviction, essentially encouraging test refusal.

Detection. Many hard core drinking drivers are alcohol-tolerant and do not typically display the overt signs of intoxication that officers are trained to look for, making detection more difficult. To illustrate, research has demonstrated that approximately 50% of drivers with a BAC in excess of the legal limit are not detected at sobriety checkpoints (9)(10).

Officers cite the lack of intensive training and inconsistent access to devices such as PBTs and passive sensors (PASs) as contributing to this problem. When facing an experienced repeat offender, officers must be careful to note small details during the investigation as these savvy individuals often refuse to cooperate with one or more elements of the investigation and arrest procedures.

Almost 50% of police officers would like more opportunities for enhanced training both at the academy and on-the-job. More than one-quarter of officers say the SFST is the best way to identify this group of offenders and would like more training in its use; 25% want more training particularly in the use of the horizontal gaze nystagmus (HGN) test. Conferences and “refresher” courses were also recommended by 37% of officers as the most useful training technique. Of considerable importance, 50% of officers report they would make more arrests if they received more training.

Incomplete Evidence. DWI investigation and arrest procedures are extremely rigorous and detailed. Police must be aware of and record all potentially relevant evidence that justifies each step they take in the investigation and arrest process. These small details are of great importance particularly when investigating a hard core drunk driver because they rarely exhibit the usual signs of intoxication, making it more difficult for an officer to justify a stop and arrest. Evidence that is overlooked, not recorded, or recorded incorrectly can result in a dismissal or acquittal in court.

Errors in procedure are both a function of a dynamic arrest environment and a lack of standardization in the interview and testing techniques employed by various police agencies. Officers admit it is not uncommon for the SFST to be administered inconsistently, or for officers to use other sobriety tests that have not been scientifically validated. These inconsistencies result in evidentiary problems in court which can translate into the exclusion of valuable evidence, reduced charges and fewer convictions.
Simplifying and streamlining the investigation and arrest process is a primary concern of all law enforcement officers. The current complexities of the arrest process, combined with the dynamic environment at the roadside, create opportunities for technical and transcription errors. In conjunction with more training, officers desire greater understanding of the evidentiary requirements needed to obtain a conviction. Working together with prosecutors is seen as a viable and meaningful solution to this problem and officers endorse the development of stronger working relationships with prosecutors. This type of collaboration already exists in some states due to the efforts of the National Traffic Law Center housed in the American Prosecutors Research Institute.

**Medical Cooperation.** Repeat drunk drivers are more likely to be involved in a crash and more likely to seek or request medical attention, even if it is not required. Once at a medical facility, it becomes easy for a drunk driver to avoid detection and conviction as some medical personnel are reluctant to notify police or comply with police requests for needed blood samples (11)(12). Although some officers report receiving excellent cooperation from medical staff, others report considerable difficulties in securing evidence with many officers reporting either resistance or failure to cooperate in 25% of cases involving medical attention. Nearly 20% of officers say they experience such problems in more than half their cases.

Without medical cooperation, it may be impossible for officers to detect impaired drivers involved in crashes. Officers are often delayed at the crash scene and unable to follow-up with the driver immediately, or unable to establish the reasonable suspicion necessary to initiate an investigation as they often have minimal or no contact with the driver at the scene. This means that little evidence can be gathered to support the filing of charges or the prosecution of the impaired driver.

Police officers recommend, as a primary solution to this problem, the development of better communication between police and medical personnel and the establishment of a policy of mutual cooperation in the investigation of impaired driving cases. Efforts to clarify concerns and expectations and discuss legal requirements will assist these professionals in moving towards an acceptable policy that will address concerns. Some jurisdictions have already begun working with medical professionals in this manner and reports indicate that this has resulted in blood draws being made a priority at several medical facilities.

**Failure to appear.** Repeat drunk drivers are less likely to appear for arraignment or trial in an effort to avoid conviction and sanctioning. When an offender fails to appear, the presiding judge issues a bench warrant ordering the arrest of the defendant. Police officers have the job of locating these defendants and bringing them to court. This is often a difficult task because officers face competing demands and limited resources. Consequently, warrants for misdemeanor DWI offenses are not a high priority. Defendants may also be able to avoid detection through the use of bogus drivers licenses, which are exceedingly difficult to detect.

The extent of failure to appear varies among jurisdictions, and the poor quality of available data makes it difficult to quantify this problem accurately. Failure to appear rates have been estimated as low as 1% or as high as 30%, depending on the jurisdiction and the presence of borders with other states or countries such as Canada or Mexico (13)(14). Unfortunately, when
officers cannot locate defendants who fail to appear, the DWI case does not proceed. This means that guilty offenders are not sanctioned for DWI and may not be identified as a repeat offender the next time they are arrested.

Officers support increasing penalties for failure to appear and the use of creative “sting” operations to apprehend these defendants. While some states use a telephone reminder system, others have resorted to luring offenders with free “prizes”. When the defendant appears to pick up their “prize”, they are arrested. Still other jurisdictions have employed amnesty programs that allow a defendant to appear voluntarily and resolve the outstanding charges in exchange for sanctions being waived for failure to appear.

Officers also report the need for improvement to the exchange of driver information between states. In most jurisdictions, police are prohibited from seizing the license of an out-of-state driver, allowing the driver to return to their home state and continue driving without penalty. A better working relationship between licensing agencies would assist in getting impaired drivers off of the roads through the effective application of licensing sanctions.

**Discussion.**
Many of the problems identified in this study are not new. However, they have become more acute as the complexity of the DWI system has grown. As a result of escalating penalties, offenders are searching for loopholes in the system in an effort to avoid conviction and sanctioning. For this reason, rates of test refusal, leaving the scene of an accident, and failure to appear are now increasing. This creates a burden on the system and results in the ineffective and inefficient processing of repeat offenders. This study clarifies how easily they can avoid identification and indirectly provides insight into the extent to which the repeat offender problem may be seriously underestimated.

This trend may continue unless problems are addressed strategically. States need to initiate a comprehensive review of their respective DWI systems, determine where the most significant problems are occurring, and implement the necessary changes to address these issues. The results of this study can provide a valuable tool to law enforcement agencies, legislators and politicians to evaluate and enhance their DWI enforcement programs and improve the detection and apprehension of repeat offenders.

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**References**


Traffic Safety Administration.


