

Mothers Against Drunk Driving



# COURT MONITORING REPORT

A LACK OF CONVICTION



**madd**  
South Carolina  
NO MORE VICTIMS®

2018

## DEDICATION



On June 23, 2015, 34-year-old Alvin Cochran Jr., of Columbia, died from injuries sustained when his motorcycle was struck by a drunk driver on Father's Day weekend.

A Good Samaritan stopped to assist Alvin and granted his dying wish to call his family. Alvin never regained consciousness after the call. Alvin's family was forced to endure more stress due to complications with the investigation that threatened their need for justice.

Alvin was the only child to his parents, Alvin Sr. and Ramona Huff. He was a loving father to his children, Alvin III and Alaisia. He was a hard worker who always wanted the best for his children, family, and friends. He loved spending time with his children, playing

basketball, riding his bike and working on cars with his friends. Alvin's mother states that the hardest part of losing her son was telling his children, then ages 12 and 5 that their daddy was gone.

Alvin's family now celebrates Father's Day beside his grave. He has not been there for his children's birthdays, award ceremonies or to see them off on their first day of school. As they continue to struggle with their loss, Alvin's family is committed to seeing MADD's mission of NO MORE VICTIMS realized. His family hopes that no other family is left with only memories, photos, and videos. For them, it is all they have left, photos of him with his children and videos of him dancing to "Before I let you go" by Frankie Beverly and Maze.



It is in Alvin's memory that we dedicate this report.

## **Executive Summary**

MADD South Carolina began its grant-funded Court Monitoring program on Oct. 1, 2015 and began to monitor cases in early 2016. The program's goals are to compile relevant statistics regarding the dispositions of DUI case in the courtrooms, to raise awareness of the level of public concern regarding the dispositions of DUI cases, and to report information on the dispositions of DUI cases in order to make improvements to the DUI enforcement, prosecution and/or adjudication systems.

Our program selected the 5<sup>th</sup> Judicial Circuit (Richland, Kershaw) and 13<sup>th</sup> Judicial Circuit (Greenville, Pickens) as focus areas based solely on serious injury and fatal DUI crash data. Court Monitoring staff and volunteers collected specific information on cases stemming from misdemeanor (first offense) DUI arrests in court hearings and through case research online. We also have held multiple meetings with informed individuals within the enforcement and prosecution communities to assist with interpretation and context. This report covers the beginning of our monitoring through cases first monitored in May 2017. Our first report was released in August 2017.

The 5<sup>th</sup> Judicial Circuit and 13<sup>th</sup> Judicial Circuit have very different approaches to DUI prosecution in regard to whether solicitors are assigned to cases as prosecutors or officers prosecute their own cases. All of the cases we monitored for the 13<sup>th</sup> Circuit were prosecuted by an attorney with the Solicitor's Office, whereas most of the cases we monitored for the 5<sup>th</sup> Circuit were prosecuted by the arresting officer, best we can tell (the online records do not specify who was the prosecutor).

Our data for Greenville County showed 42% of the 597 cases we monitored with a final determination ended with the accused being found guilty of DUI or an equivalent charge. Another 47% were pled down to a lesser charge, usually reckless driving. For Richland County, 48% of the 160 cases ended with a conviction, and another 48% were pled down. For Kershaw County, 46% of the 195 cases ended with a conviction, and another 51% were pled down. For Pickens County, the conviction rate was only 36%, but it was based on only 28 total cases. In summary, none of the four counties had a conviction rate over 50%.

MADD's 2017 Court Monitoring national report shows a combined conviction rate of 61% for the 13 states that had data.

Through the data and subsequent discussions with enforcement and prosecution experts, there was a clear focus on the key role that summary court judges have on the overall outcomes of cases. When they convey hesitation to convict for DUI or make rulings on pre-trial motions in a way that damages the prosecution's case, it affects greatly both that case and future cases prosecuted in that courtroom. Some of our experts expressed relative satisfaction with their local summary court judges, but some spoke to great variation in attitude, rulings, and familiarity with the technical aspects of the complex DUI laws which can lead to pleas to less charges being more common than convictions.

One of South Carolina's challenges to DUI convictions is related to the 40% of those arrested who refuse to give a breath or blood sample. A refusal law with limited actual impact on those who refuse is largely to blame. What should be a six-month license suspension is negated by the ability to obtain a temporary license shortly after the arrest.

There are also definite concerns over the practice of officers prosecuting their own cases because it is not the focus of their training, and we have the expectation that our officers are out enforcing laws. Other states do not allow this. Our data show that officers as prosecutors achieve a conviction rate of only 24% when going up against a DUI defense attorney.

MADD South Carolina continues to monitor cases in these areas. We will examine whether the trends presented here hold as more data are collected. However, we feel confident in putting forth the following recommendations to improve the DUI prosecution and enforcement situation in South Carolina and enhance safety in our communities.

- Call on summary court judges to take part in as much training as possible regarding our complex DUI laws and acknowledge the important role they have in our unacceptable conviction rates.
- We also call on judges to recognize the impact of case delays on the likelihood of a conviction and see to it that DUI cases are heard in a timely manner and continuance motions are not abused as a tactic to get a reduced conviction.
- Strengthen penalties for refusing to submit a breath or blood sample after a DUI arrest, first by tying the Temporary Alcohol Licenses that those who refuse can apply for into the Ignition Interlock Device Program.
- Move toward minimizing officers prosecuting their own cases in court.
- Encourage more aggressive prosecution of DUI cases so that more are held accountable with the appropriate penalties and not pled down to reckless driving charges that do not keep the public as safe from repeat offenses.
- Amend the state's dash cam video recording statute so that the other evidence in a DUI arrest can be used even when there is a problem with the video.
- Strengthen Emma's Law so that all convicted DUI offenders are put on the Ignition Interlock Device Program, the most effective available approach to reducing repeat offenses.

## **Introduction**

Texas

California

Florida

Georgia

North Carolina

The top five states in the nation for drunk driving fatalities in 2016, and all states in the top 10 for population.

South Carolina

Then comes South Carolina. Sixth in the nation for fatalities yet we are 23<sup>rd</sup> in population. These negative rankings are not new, yet South Carolina has yet to show the conviction to take meaningful action to turn things around.

Drunk driving is a serious crime. You only need ask the families of the 331 people who lost their lives in a drunk driving crash in 2016. We come to know many of these families, and our hearts break with them. We can support them, advocate for them, help them find their voice, and honor their loved ones, but we cannot ever fix the heartache. These crashes are sudden, violent, and tragic, and they cannot be undone. Yet they are also 100% preventable.

According to the state's 2019 Impaired Driving Countermeasures Plan, "The State of South Carolina has traditionally ranked as one of the top states in the nation for impaired-driving fatalities." It goes on to share 2012-2016 National Highway Safety and Traffic Administration (NHTSA) data that show South Carolina's alcohol-impaired driving Vehicle Miles Traveled fatality rate to be .61 deaths per million miles travelled, much higher than the national average of .33. The data show that alcohol-impaired driving deaths have ranged between 300 and 350 since 2011 with 2015's 301 alcohol-impaired driving fatalities being the lowest year in that period.

The message of the seriousness of drunk and drugged driving crashes may get lost without consistent outcomes in the court system.

## **The Case for Court Monitoring**

Court monitoring is a proven tool to affect the adjudication process and is recognized by NHTSA as an effective countermeasure to reduce alcohol impaired driving (Countermeasures That Work, NHTSA, 6th edition, March 2011). A NHTSA commission study found that in cases where court monitors were present, conviction rates for DWI/DUI offenders were 10% higher and case dismissal rates were 70% lower (Impact

of Court Monitoring on DWI Adjudication, December 1990, DOT HS 807 678). Court monitoring has also proven to be a highly effective method of creating ongoing productive discussions between citizens and the judiciary. This makes the courts more accountable to the community they serve.

Research shows that a first-time DUI offender has driven drunk an average of 80 times prior to their first arrest.

Nationally, about one-third of drivers arrested for DUI have had a previous DUI conviction. Inconsistency in the handling of DUI cases, DUI charges being amended to lesser charges and dismissals of cases may contribute to repeated DUI offenses. MADD supports swift and equitable treatment for all DUI cases.

MADD's Court Monitoring Program was created to ensure that DUI offenders are prosecuted, dismissals of DUI cases are decreased and justice is achieved. Our Court Monitoring program's goals are:

- To compile relevant statistics regarding the dispositions of DUI case in the courtrooms
- To raise awareness of the level of public concern regarding the dispositions of DUI cases
- To report information on the dispositions of DUI cases in order to make improvements to the DUI enforcement, prosecution and/or adjudication systems

### **Court Monitoring in South Carolina**

Our court monitoring program was funded by a grant from the Office of Highway Safety and Justice Programs (OHSJP) within the South Carolina Department of Public Safety. The three-year grant began Oct. 1, 2015. The project focuses on high priority judicial circuits as supported by data provided by OHSJP. Combining the data by county for "All Fatal and Severe Injury DUI Alcohol and/or Drug Collisions, 2009-2013" into the 16 judicial circuits revealed the following circuits with the highest collision counts:

13<sup>th</sup> Judicial Circuit (Greenville, Pickens), 527

15<sup>th</sup> Judicial Circuit (Georgetown, Horry), 379

5<sup>th</sup> Judicial Circuit (Kershaw, Richland), 366

The 5<sup>th</sup> Circuit and 13<sup>th</sup> Circuit were selected for court monitoring due to a stronger existing volunteer base in those areas at the time. In 2017, MADD South Carolina was awarded a second court monitoring grant for the counties of Berkeley, Horry, and Charleston. That project will likely have data to share in early 2019.

To achieve the above listed goals, MADD South Carolina Court Monitoring staff and volunteers collected specific information on existing MADD court monitoring forms from court hearings and through case research online. Data collected for each case included jurisdiction, offender demographics, date of arrest and court appearances, original charges, disposition of the case (plea, reduction in charges, guilty/not guilty verdict), and extent of the penalties issued. While detailed information was collected, not all of the data has been shared in the annual report. Our protocol is to not share data on specific judges or prosecutors with data being shared at the county levels only.

*MADD Court Monitoring Program Volunteers.* Court Monitoring Program volunteers are recruited through speaking engagements, social media postings, volunteer board postings, career/internship fairs, and referrals from existing volunteers and volunteer inquiries made to MADD South Carolina. All Court Monitoring Program volunteers complete an application and agree to a background check performed by MADD's national office. Once the background check has been approved, the volunteers complete a three-hour online training program and in-court training with the MADD South Carolina's Court Monitoring Specialist. Volunteers monitor DUI cases by attending DUI hearings or by researching DUI cases online through the South Carolina Judicial Department's Public Index database, completing Court Monitoring forms and returning them to the Court Monitoring Specialist for review and data entry. Currently, MADD South Carolina only has one staff person in their Court Monitoring Program. Volunteers are a crucial part of MADD's success, however the majority of the data collected in this report was monitored by the Court Monitoring Specialist. Volunteer recruitment to supplement the staff's work is ongoing.

*Quantitative Data Collection.* The Court Monitoring Program data were obtained from two sources: 1) MADD Court Monitoring forms completed by MADD South Carolina staff and volunteers, and 2) the South Carolina Judicial Department's Public Index database. Data from the MADD Court Monitoring forms were collected from four categories: 1) case information, 2) charges, 3) sanctions/sentence and 4) comments. Case information included, but was not limited to, defendant's name, date of birth and the name of the court where proceeding was held. Charges included the original charge, the amended charge (if applicable), final charge and the arresting agency. Sanctions/sentences imposed included, but were not limited to, jail time, fines, ignition interlock, license revocation/suspension and probation. Comments provided additional case information.

Information collected by MADD South Carolina staff and volunteers was verified through records accessed through the South Carolina Judicial Department's Public Index database. The database provided DUI case information, charges and sanctions. The data obtained from the Public Index was compared to the data recorded by MADD South Carolina staff and volunteers to assure accuracy of the data collected.

**The data in this report are from DUI cases (initiated by a DUI arrest) scheduled to be heard in chosen magistrate and municipal courts in South Carolina's 5<sup>th</sup>**

**Judicial Circuit and 13<sup>th</sup> Judicial Circuit from January 2016 to May 2017.** Future reports will have more data as we monitor additional cases and follow-up on many of the cases that did not have a final disposition at the time of preparing this report. This report is the second that MADD has generated from this project with the first report being released in August 2017.

The courts we monitored were chosen based on availability of access to court rosters, frequency of court hearings and the number of DUI cases heard in court.

The courts most frequently monitored were the magistrate courts in the 5<sup>th</sup> Circuit and in the 13<sup>th</sup> Circuit. The difficulty with the municipal courts was a lack of access to court rosters and wide variation in the number of DUI cases heard from hearing to hearing – meaning that some days you may have 15 DUI cases and the next hearing zero DUI cases. The magistrate courts seemed to always have a large number of DUI cases for each scheduled hearing. It made the most sense to maximize our resources to attend court where there are more cases being heard than travel to court, sometimes at a considerable distance, to monitor one or two DUI cases. The goal of court monitoring is not to monitor every single DUI case, but to do a thorough and complete monitoring of those cases that are monitored.

In Greenville County, the courts we focused on primarily heard cases written by the Greenville County Sheriff's Office and the Highway Patrol. In Kershaw County, the courts we focused on primarily heard cases written by the Kershaw County Sheriff's Office and the Highway Patrol. In Pickens County, the courts we focused on primarily heard cases written by the Pickens County Sheriff's Office and the Highway Patrol. In Richland County, the courts we focused on primarily heard cases written by the Richland County Sheriff's Office, Columbia Police Department, University of South Carolina Police Department, and the Highway Patrol.

## **Data Analysis**

Data from misdemeanor DUI cases were entered into MADD's Court Monitoring database, which is utilized by Court Monitoring programs in 13 MADD state offices. Variables of interest for this report included case disposition to include guilty, not guilty, amended (pled down) and dropped/dismitted, case age, sanctions and prosecutor type.

In order to simplify the data yet remain accurate, we determined the various outcomes of cases could be reduced to four categories. "Guilty" includes those cases where the accused pled guilty to DUI or Driving with an Unlawful Alcohol Concentration (DUAC) or they were found guilty in a bench or jury trial. We explain DUAC below and our decision to count that as a guilty outcome below. "Found Not Guilty" means that a judge/magistrate or jury determined the accused to be not guilty. "Dropped/Dismissed" refers to cases where the charge is thrown out completely, without another charge

being issued. “Pled Down to a Lesser Charge” means that the accused was not found guilty of DUI or DUAC but was ultimately found guilty to a lesser charge, predominantly reckless driving, stemming from the same incident. As a technical point, whereas this would be referred to as amending the original charge in other states, it is common practice in South Carolina to dismiss (or *nol pross*) the original charge and write a new charge for the lesser offense.

DUAC is a separate statute (56-5-2933) from the state’s DUI law (56-5-2930) but carries essentially equivalent penalties. If a subsequent DUI charge is made after a previous DUAC conviction, that DUI is a second offense. In our discussion with our experts in the system, it was unanimous that a DUAC conviction should be counted the same as a DUI conviction for the purposes of our data analysis. They explained that some people will accept a plea deal to a guilty for DUAC charge because 1) the offender can say they have never had a DUI (technically) if asked and 2) the offender can get the original DUI charge expunged so it will only show up on a driving history but not a criminal history. Given the challenges of getting a DUI conviction in South Carolina, MADD SC sees that getting an agreement to plea to DUAC makes sense given the penalties are essentially equivalent.

An additional challenge to analyzing the data is due to the difficult nature of navigating the online public index records. When a case is pled down in South Carolina, as a large percentage are, the original ticket number ceases being used and a new one is opened. However, the old ticket number doesn’t reference what the new ticket number is, so we must undergo a search for the offender in the records. For an unusual name, that may be easy, but for a “Mark Smith”, that could mean a long review of lots of offenders with that name to find where the trail of that original DUI ticket continues. Sometimes we cannot find that record. We also often use the public index to know about when DUI cases will be heard in certain courts, but that searching is incredibly time consuming. If there are missing cases or inaccuracies, it affects the accuracy and thoroughness of our work. It is a limitation that we have to work under.

### **Key Expert Input**

The data collected directly from monitored cases that we share in this report is compelling in many ways, but our data alone are not sufficient to fully grasp the landscape of DUI prosecution in these areas. During the summer months of 2018, MADD South Carolina held two “stakeholder roundtable” discussions in the 5<sup>th</sup> and 13<sup>th</sup> judicial circuits. Invitees included judges and magistrates, solicitor’s office staff, experienced law enforcement, key community partners, and our court monitoring volunteers.

MADD staff presented key data to the attendees and then engaged in very valuable discussions about their impressions and additional information needed to understand the situations that lead to what we saw in the data. Because there were key individuals

not able to attend, we held additional meetings to gain their perspective. These collective perspectives are shared in multiple places below interspersed with our court monitoring data.

**Total Number of Cases Monitored**

We have now monitored 1,248 total cases, of which 980 cases have had a final determination and 268 cases remain open. These open cases will continue to be monitored, and the outcome of those cases will be included in the next annual report if they have a final disposition by the time of that report.

The primary reason for a case still being open is that the defendant requested a jury trial and that was set for a future date.

**Closed/Open Cases By County**

<b>COUNTY</b>	<b># OF CASES CLOSED</b>	<b># OF CASES OPEN</b>	<b>% OF CASES CLOSED</b>
GREENVILLE	598	24	96%
KERSHAW	197	94	68%
PICKENS	28	4	88%
RICHLAND	166	137	55%

The table above shows that we had far more data for Greenville County than others. There were few cases monitored for Pickens County, so any subsequent data presented should be viewed with that consideration. The table also shows that cases in Greenville and Pickens Counties tend to be adjudicated at a faster pace than those in Richland or Kershaw Counties.

In this report, we will spend little time referring back to data from our first report released one year earlier, as our data are cumulative and this report incorporates those data and more. However, we will note that the rates of cases that are closed are much higher in this report. This is due more to the length of time between when the last new case was included and the final day that we checked on case updates being longer for this second report. In other words, the increased rate of closed cases is not meant to imply that cases are not coming to a final decision at a faster rate but only that our timeline allowed more time for cases to play out.

## **Type of Prosecutors and Defense Representation**

Some cases we monitored were prosecuted by an attorney from the Solicitor's office. Some were prosecuted by the arresting officer. The latter is an unusual practice from a national perspective. A report, written by Clemson University and commissioned by the South Carolina Department of Transportation, titled "Applying Successfully Proven Measures in Roadway Safety to Reduce Harmful Collisions in SC" says that South Carolina is one of two states in the nation where police officers prosecute their own DUI cases.

We also created two categories to describe the representation of the accused. "Defense Attorney" means the accused had a paid attorney or a public defender. The other category, "Defending Self," is for those who handled their own case without any attorney. The legal term for this is Pro Se.

Our data show a substantial difference between the 13<sup>th</sup> Circuit (Greenville and Pickens) and the 5<sup>th</sup> Circuit (Richland and Kershaw) in terms of who prosecutes the cases. All cases we monitored in the 13<sup>th</sup> Circuit (626 closed cases) were handled by a representative of the Solicitor's office. No cases we monitored in that circuit were prosecuted by the arresting officer. In contrast, we are not certain of any cases in the 5<sup>th</sup> Circuit that we monitored that were handled by the Solicitor's office, though we cannot be certain due to the online court records not specifying. Every case we monitored in person was prosecuted by an officer. Therefore, we refer to the prosecution status of the 5<sup>th</sup> Circuit cases as "Officer Likely."

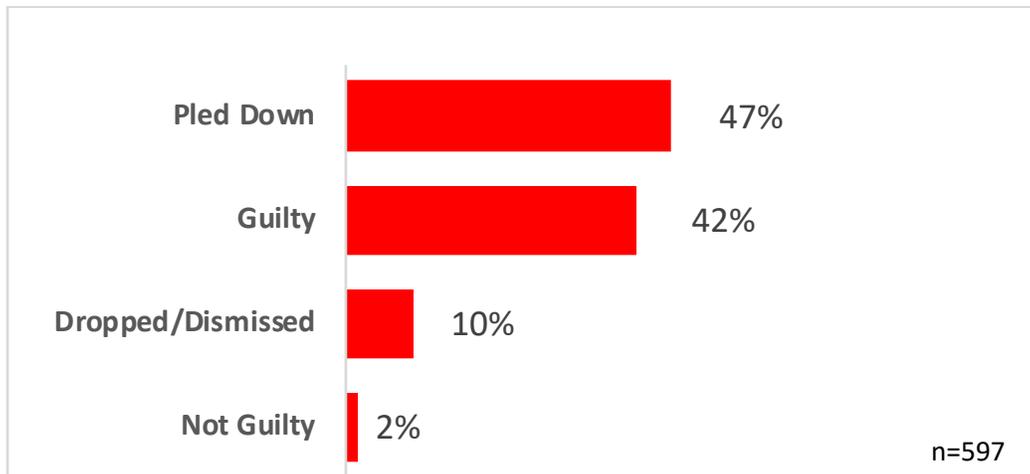
Conversations with prosecutor and officer experts confirmed that there is a direct connection between who prosecutes the cases and the percentage of open/closed cases we presented earlier. When Solicitors prosecute the case, they are more likely to bring the case to a final determination at the first opportunity than when an officer prosecutes. There could be several reasons for this, including:

- Solicitors have the sole job of prosecuting cases compared to officers for whom that is not their primary responsibility. Officers have fewer days they are scheduled to be in court.
- Solicitors may have expectations within their offices to move cases and keep their docket manageable that do not exist to the same extent for officers.
- Officers may be less amenable to agreement to a lesser charge plea as they believe their original arrest decision was correct and want to see it affirmed by the court. Some law enforcement agencies may, as policy or culture, be less supportive of agreeing to pleas to less charges.

### **Case Dispositions by Area**

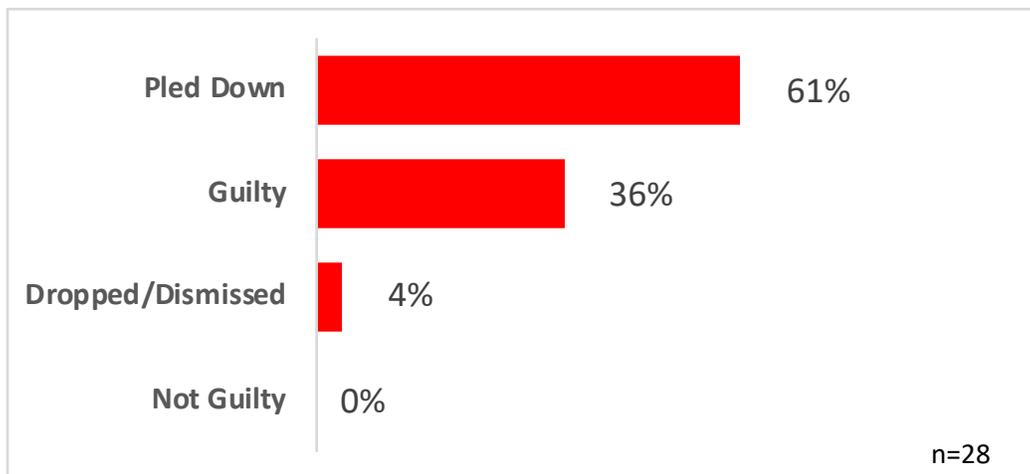
Below, we share, by area, the results for the cases that we monitored that had a final outcome at the last time we checked the data. As discussed earlier in the report, some of those charged requested jury trials, and those trials have not happened yet.

#### **Greenville County**



For the 597 cases with final outcomes we monitored in Greenville County, 250 were found guilty, 279 were pled down to a lesser charge, 58 were dismissed, and 10 were found not guilty.

#### **Pickens County**



For the 28 cases with final outcomes we monitored in Pickens County, 10 were found guilty, 17 were pled down to a lesser charge, one was dismissed, and none were found not guilty. We caution drawing any conclusions from such a small dataset.

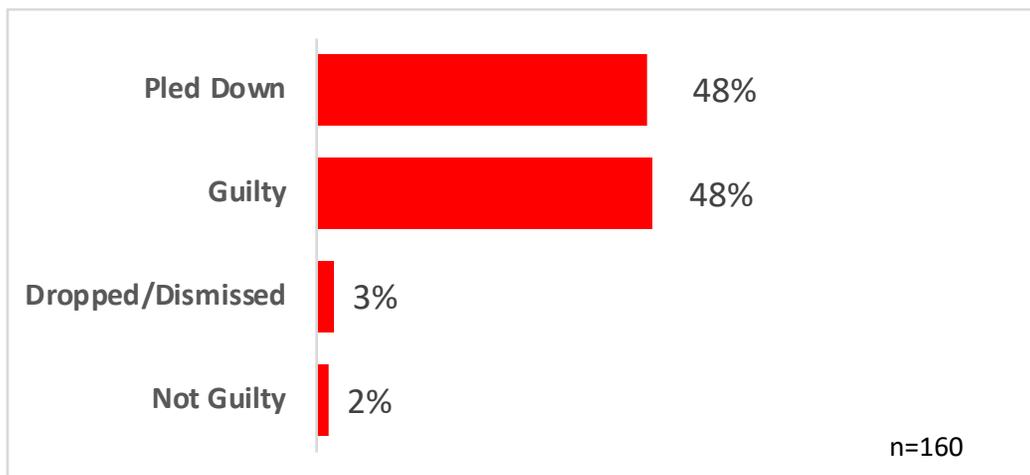
The 13<sup>th</sup> Circuit Solicitor's Office shared their internal data for misdemeanor DUI cases they handle for the time period of January 2016 through May 2017. This is a rough approximate of the time period of MADD's data, though our project has had starts and stops with staff changes and other complications that lessened our monitoring during some stretches. It should be noted that there is no expectation that our data and the Solicitor's Office data would line up exactly. MADD's court monitoring project does not claim to track every DUI case due to our resources.

The Solicitor's Office shared data for 1,252 Greenville County DUI cases. 566 (45%) were found guilty, 619 (49%) were pled down to a lesser charge, seven (1%) were found not guilty, and 60 (5%) were dismissed for a variety of reasons. These counts did not include 59 cases that were moved up to General Sessions Court.

For Pickens County, their data covered 222 cases. 71 (32%) were found guilty, 130 (59%) were pled down, zero were found not guilty, and 21 (9%) were dismissed.

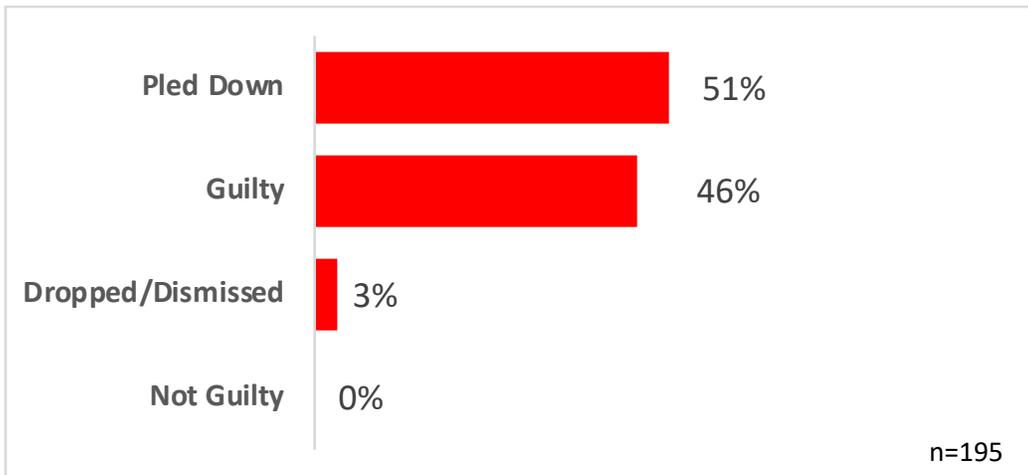
While there are some variations in these data to MADD's, they both generally paint a similar picture, especially given MADD's limited Pickens County data.

### Richland County



For the 160 cases with final outcomes we monitored in Richland County, 77 were found guilty, 76 were pled down to a lesser charge, four were dismissed, and three were found not guilty.

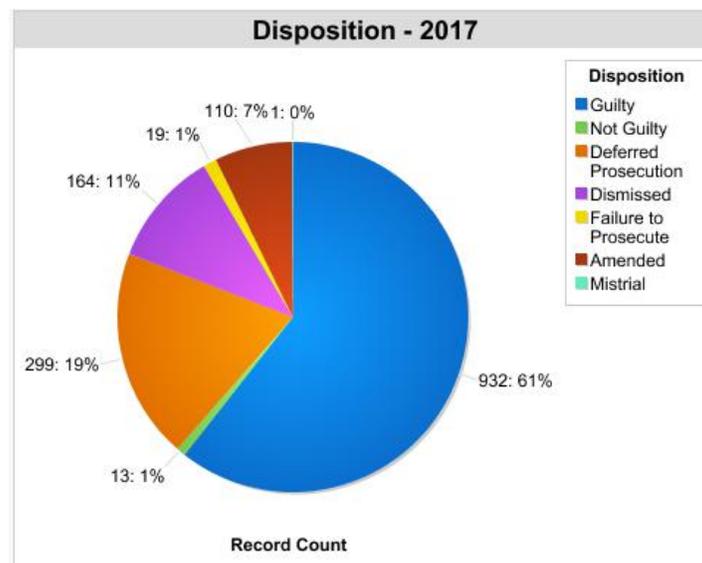
## Kershaw County



For the 195 cases with final outcomes we monitored in Kershaw County, 90 were found guilty, 99 were pled down to a lesser charge, six were dismissed, and none were found not guilty.

### National Data

It is difficult to make any strong comparisons to national data as each state has varying DUI sentencing options. For example, many states have processes in place where some first-time DUI offenders can have their charge expunged after some combination of education, treatment, community service, and fines with the understanding that there will be a traditional sentence if the terms are violated by the offender. In the chart below, MADD describes this as “deferred prosecution.” South Carolina does not have an option like this.

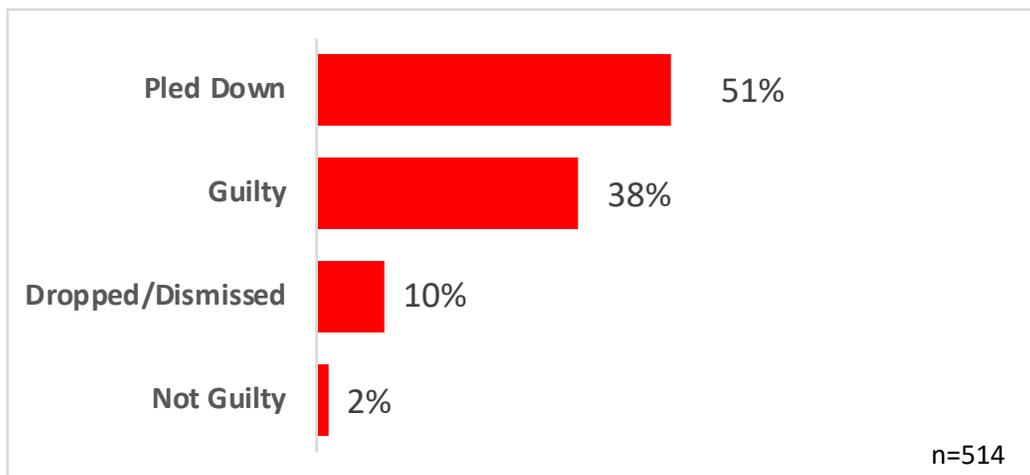


With that limitation acknowledged, the chart above shows the various dispositions of DUI cases from multiple states that have MADD Court Monitoring. It shows 61% of those arrested are found guilty. As all four of our counties in this report show a less than 50% conviction rate, it is safe to say that South Carolina has a conviction rate far worse than the national average.

### **Case Disposition by Prosecutor Type**

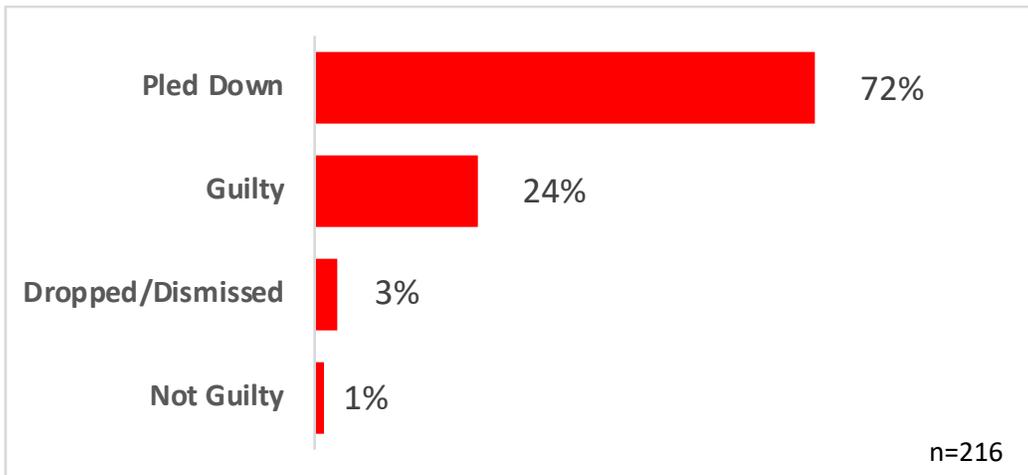
Below, we share data on the results of cases that had a final outcome based on the type of prosecutor (lawyer vs. officer) and type of defense (retained attorney, whether a hired attorney or a public defender, or the accused representing themselves). Again, we note that all of the cases that we monitored from the 13<sup>th</sup> Judicial Circuit were prosecuted by a solicitor and none that we know of in the 5<sup>th</sup> Judicial Circuit, though there are a number of cases that we are uncertain of who prosecuted them in the 5<sup>th</sup> Judicial Circuit because the online court records do not specify. We refer to the 5<sup>th</sup> Circuit cases as “Likely Officer Prosecuted.”

#### **Lawyer Prosecutor vs. Defense Attorney**



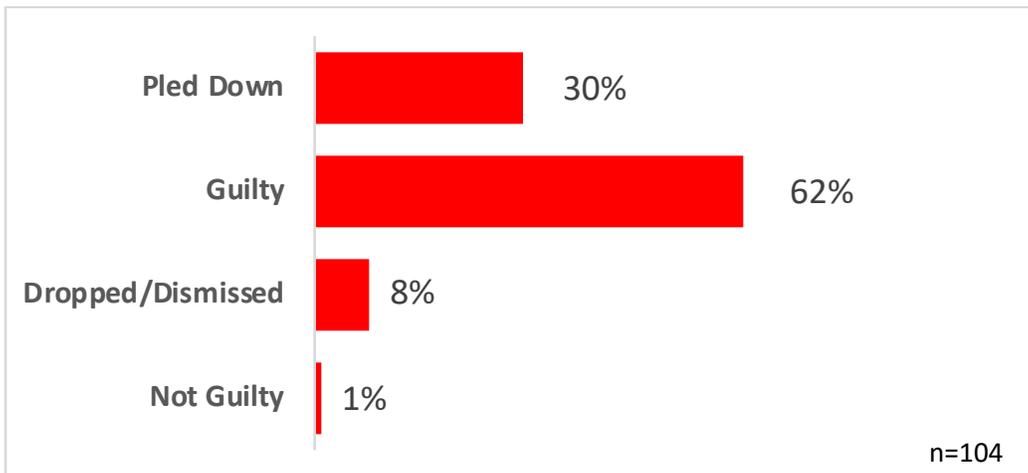
Dispositions involving a solicitor against a defense attorney were 193 found guilty, 262 pled down to lesser charges, 50 dropped/dissmissed, and nine found not guilty.

### Likely Officer Prosecutor vs. Defense Attorney



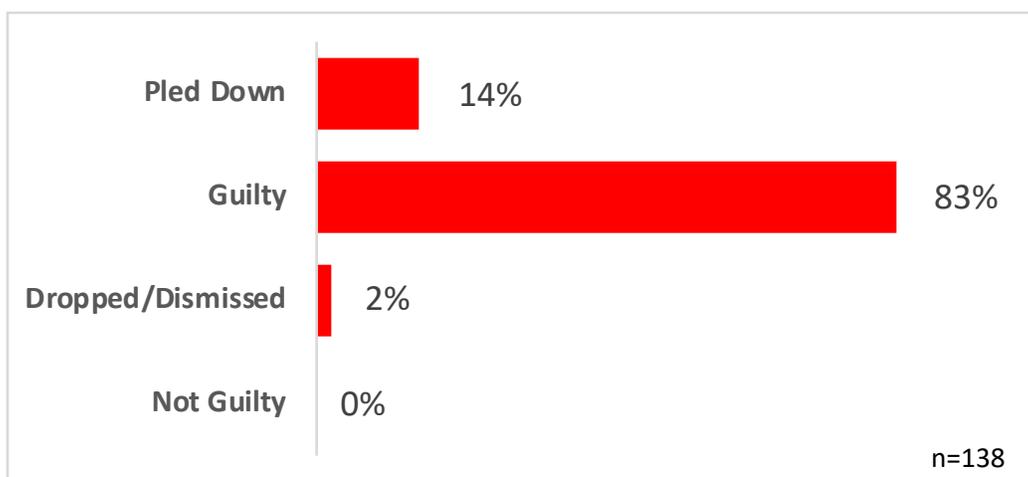
Dispositions involving a likely officer prosecutor against a defense attorney were 51 found guilty, 155 pled down to lesser charges, seven dropped/dissmissed, and three found not guilty.

### Solicitor vs. Defending Self



Dispositions involving a solicitor against someone defending themselves were 64 found guilty, 31 pled down to lesser charges, eight dropped/dissmissed, and one found not guilty.

### Likely Officer Prosecutor vs. Defending Self



Dispositions involving a likely officer prosecutor against someone defending themselves were 115 found guilty, 20 pled down to lesser charges, three dropped/dissmissed, and none found not guilty.

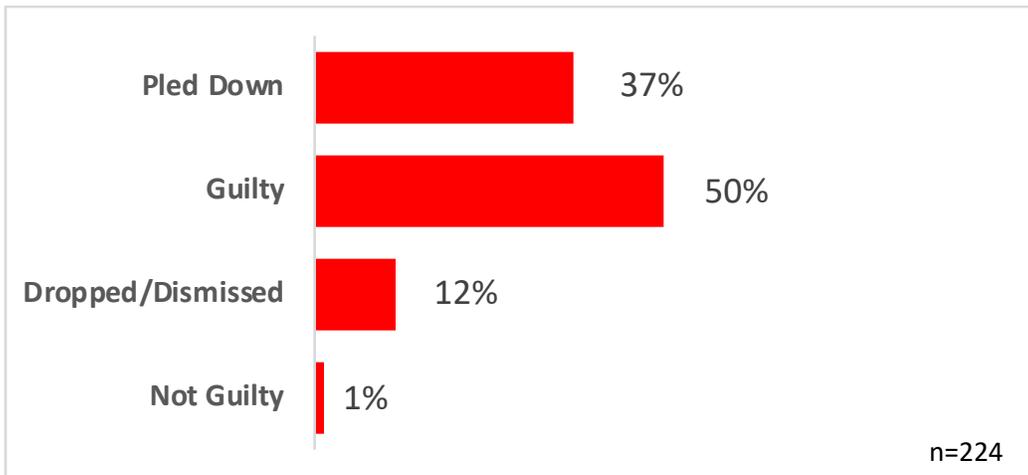
In our data, the highest conviction rate (83%) was when an officer is prosecuting against someone defending themselves. The conviction rate for solicitors prosecuting against someone defending themselves was the next highest (62%). Having a retained defense attorney was associated with lower conviction rates with the lowest rate being for officers prosecuting against a defense attorney, as those cases resulted in a DUI conviction in just one out of four cases.

This pairing is one often referenced in our state as problematic when discussing the issue of the need to not have officers prosecuting cases. It would be logical to assume that a trained attorney would have an advantage in a legal match-up against a road officer. A defense attorney may be able to make motions or use strategies that someone without formal legal training would be challenged to respond to. The vast majority of officers we have spoken with do not want to prosecute their own cases and are frustrated at the “unfair” match-up.

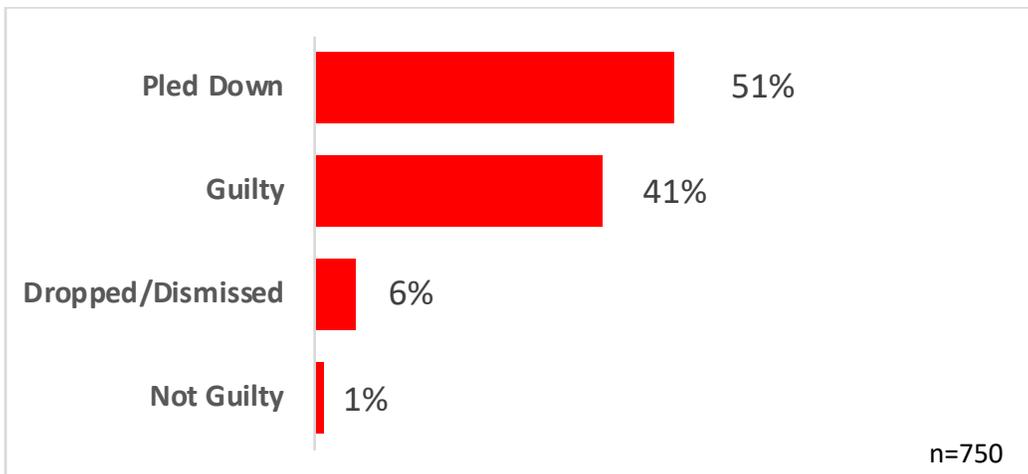
### **Case Dispositions by Court Monitor in Court vs. Not in Court**

When possible, MADD prefers to monitor DUI cases with a Court Monitor or a Court Monitor volunteer in the courtroom. However, logistics sometimes prevent this from being possible for all cases we want to monitor. Below, there is a summary of cases monitored in court and cases that were monitored out of court. When a staff person is not able to attend court physically, those cases are then monitored using the online Public Index. Of the current closed cases, 224 were monitored in court and 750 were monitored online. We expect to shift this percentage considerably with increased staffing for the project.

### In Court Monitoring



### Online Monitoring

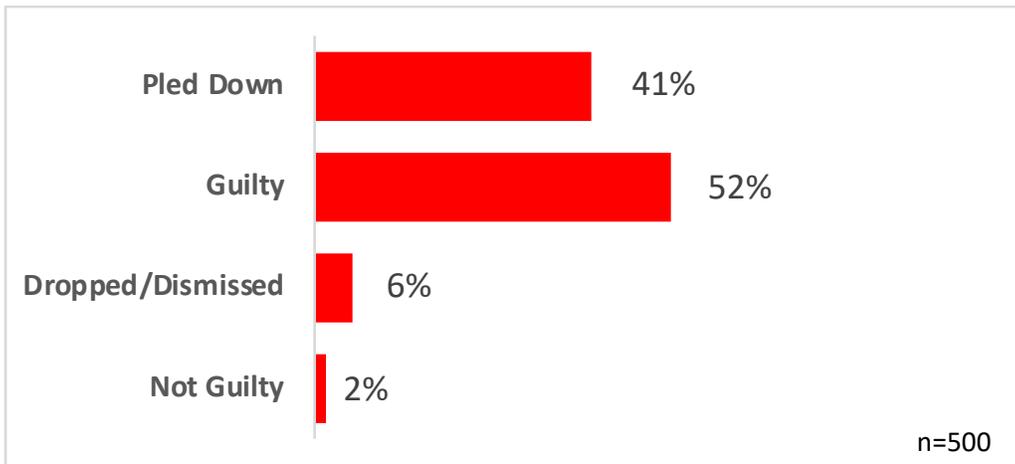


While these data show a higher conviction rate and lower rate of cases being pled down to lower charges when we are in court, it cannot necessarily be concluded that this is due to a court monitor being present due to our lack of being a consistent presence. However, this is an aspect of the data we will continue to monitor in future years, especially as our court monitors become more familiar faces in the courtrooms.

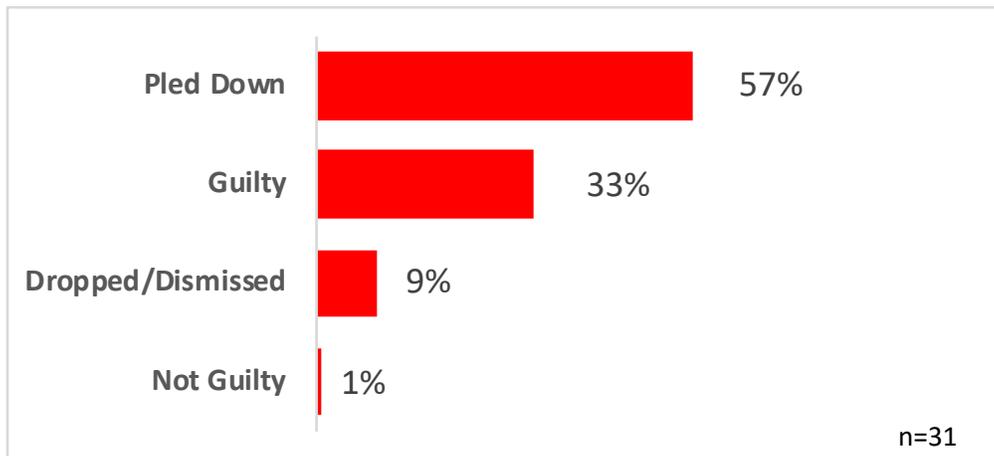
### **Case Dispositions by Case Age**

Part of our data collection is to record the length of time between the arrest and the final determination of the case outcome.

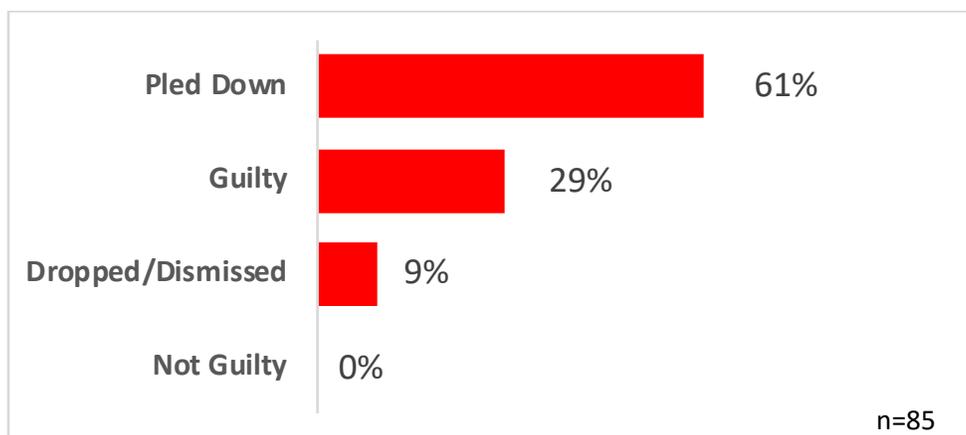
### Cases Resolved in Less Than One Year



### Cases Resolved in Between One and Two Years



### Cases Resolved in Greater Than Two Years



Our data show that the conviction rate is above 50% for cases settled in under a year, but there is almost a 20 percentage point drop in conviction rates for cases that took between one and two years. That drop continues down to just 29% for cases that take more than two years. This is compelling evidence to support what is generally known among those who prosecute cases—a delayed case has a much lower chance of ending in a conviction.

## **Discussion**

Collectively, the data presented in this report are concerning, starting with a less than 50% conviction rate in all four counties. While DUI convictions are arguably challenging in many other states as well, the numbers clearly indicate the DUI conviction rate is considerably lower in South Carolina.

We also see considerable variations in conviction rates based on the combinations of who is prosecuting (attorney or officer) and who is defending (defense attorney or accused defending themselves). Of particular concern is the practice of officers prosecuting their own cases, especially as our data show they have a 24% conviction rate when facing defense attorneys.

We also show a clear relationship between the time it takes to bring a case to a final determination and the likelihood that result is a DUI conviction, with conviction rates dropping from above 50% within one year to 33% if it takes longer than one year.

The reasons for these challenges are multiple and complex. However, below we attempt to highlight many of the primary factors that cause us concern based on our observations and our multiple conversations with our expert panels.

### **A Focus on Pleading Down Cases**

Rather than speculate or risk second-guessing those who know each case best, we would like to focus on the larger issues that lead to frequent pleading down to reckless driving, or other lesser charges, in our state. This discussion does not come directly from the court cases we monitored because the factor or factors that lead to a case being pled down rarely get mentioned in open court. Our court monitor will only hear (or see online) that a plea deal was worked out, but not why. Therefore, our discussions with our informed experts were key as we worked through a list of the primary factors for pleading down a DUI charge to a lesser charge.

1. South Carolina's Dash Cam Video Recording Statute. By all accounts, South Carolina has the nation's strictest law (56-5-2953) regarding the significance of in-car video (dash cam) footage to the prosecution of a DUI case. While dash cam footage of the arrest process is used in many states, South Carolina places unique emphasis on its presence and completeness to the extent that generally

there cannot be a conviction without a video and even minor imperfections in the video can preclude getting a conviction, despite the presence of other strong evidence. In other words, an officer can witness and record erratic driving behavior, smell alcohol on the person, hear an admission to drinking and driving, and have their shoes thrown up on, but if their dash cam video is lacking, the case likely will be thrown out or pled down to reckless driving. Video problems could include faulty video or audio, parts of the arrest process being unclear or obscured, or even just portions of the person's body being tested for sobriety being out of frame for short moments. Many cases are lost when Miranda rights are heard being clearly read to the offender on the audio recording but that does not appear within the video frame. No other crime requires on-camera reading of Miranda. Some law enforcement officers reported to us the problem of videos being lost during the automatic download process from their vehicle to the agency server.

It is MADD's stance, along with many partners we work with, that our dash cam video statute is a major problem and needs to be changed. The preference is not to remove dash cams from the arrest process but to amend the law so that judges are clear that a shortcoming in the video could result in the video, or a portion of it, being thrown out, but that the other evidence stays. No other crime puts such emphasis on the video.

It should be noted that many DUI arrests take place late at night on the side of active roadways. It is very likely that many cases will have unclear video due to lights, glare, shadows, imperfect angles, and inevitable mechanical malfunctions. An officer conducting an investigation out of the car cannot be expected to have perfect knowledge of what is being recorded. While recent higher court rulings have addressed some of the most outlandish types of video-related case dismissals that MADD collected from officers and prosecutors in 2014 and 2015, more needs to be done legislatively to correct this issue.

The 13th Circuit Solicitor's Office shared with us a collection of forms that are completed every time a DUI case is pled down to a lower charge and the rationale for that agreement. A senior prosecutor reviews all of them. Video issues was clearly the leading factor.

2. Implied Consent/Datamaster Process and Video Recording. South Carolina has one approved machine for the purpose of getting a Blood Alcohol Content reading on someone arrested for drunk driving. Unlike many other states, South Carolina does not allow officers to use a portable breath testing device on the side of the road to assist their investigation.

There is a very specific process to running a Datamaster test on someone arrested for DUI, including exact words the officer must read. That process also must be video recorded. If there is almost anything done outside of this exact protocol or any issue with the video tape recording, the case often is pled down.

There are similar challenges if the case is one that requires a blood draw from a hospital. Again, any deviation from the precise protocol often dooms the chances for a conviction, despite other evidence.

3. Judges/Magistrates Not Favorable to DUI Convictions or Lacking Proper Legal Training. Based on past experiences with cases, those prosecuting DUI cases may come to believe that some judges/magistrates do not like convicting people of DUI and, consequently, they work out a plea to a lesser charge. Very often, it may not be a blatant unwillingness to convict for DUI, but an indication that the complexities of the state's DUI laws go beyond the judge's level of training and experience. This can lead to unexpected or inconsistent rulings that make it very challenging to prosecute in that courtroom.
4. Officer Error and Inexperience. As described above, South Carolina puts an especially high burden on an officer arresting someone for DUI because of the exacting procedures required by law. However, it is the current law of the land, and many officers excel at making strong cases. Officers that do not put all of their training to use in an investigation can often hurt the prosecution and necessitate a plea to a lesser charge. Even experienced, diligent officers sometimes neglect to fulfill every requirement of the DUI investigation, but we are constantly hearing about high law enforcement turnover and more inexperienced officers being on the road. Without high quality training and incentives to excel in DUI investigations, this will lead to more arrests than may not end up as convictions. This is still preferable to not arresting for DUI at all, however, if the officer believes there is impairment.
5. Delays in Cases. It is often discussed that the longer a case drags out, the less likely a conviction will be reached. If the arresting officer moves, leaves law enforcement, or for any other reason becomes unavailable for the hearing then the case is often dismissed. Many of our experts related stories of defense attorneys requesting continuances with one possible benefit being that the officer becomes unavailable. There are other factors that can delay a case, however, including the fact that misdemeanor DUI cases are heard in the lowest courts. If someone involved in the prosecution or defense of the case is needed in a higher court, then that will likely prompt a continuance. Military obligations by any party involved were also noted as a reason for continuances.

6. Inability to Have the Toxicologist in Court. When a blood draw is part of the investigation, the defense can request that any medical personnel who are listed in the chain of evidence be present. If that person had moved or is unavailable for any reason, there will be no DUI conviction. As drugged driving increases, this issue could become even more prevalent.
7. Perceived Conflicts of Interest. In discussing the early data with key groups, we certainly heard comments referring to the “good ol’ boy system” and close relationships between defense attorneys and judges or between defense attorneys and prosecutors or between the accused and a prosecutor or judge. Our court monitoring process could not and would not identify any specific situation that would fall under this description, but it was agreed that these relationships could increase the likelihood of a plea deal being worked out.

This is likely not an exhaustive list of why DUI arrests eventually are plead down to lesser charges, but they reflect a majority of the discussion with our key experts.

### **A Focus on the Role of the Judiciary**

A limited experience in the courtroom could lead one to the conclusion that the summary court judges hearing misdemeanor DUI cases do not have a substantial impact on the percentages of cases that lead to DUI convictions or are pled down to lesser charges. Often, the majority of DUI cases heard on a given day have already been worked out between the prosecutor and the defense, whether that agreement is a guilty plea for DUI or DUAC or a plea to a lesser charge. In these cases, the judge is typically signing off on this agreement.

However, a deeper look reveals that the summary court judge has an incredible amount of influence over the overall likelihood that an arrest ends up as a DUI conviction. This happens in several ways:

- *Past Rulings.* The way a particular summary court judge has handled previous cases, including pre-trial motions, can have an immense impact on how future cases will be handled in that courtroom. Many of those we spoke to who prosecute cases spoke of some substantial variations in the environment from courtroom to courtroom. They are very aware of their past experiences, whether that is an impression that a judge is or is not amenable to convicting people for DUI or whether they tend to be favorable to the many defense motions that are often made. As an example, if a prosecutor has experienced a judge throw out a dashcam video due to some visual obstruction that did not materially influence whether the officer’s investigation was correctly conducted, then that prosecutor will reasonably be influenced to plead down future cases rather than lose the case entirely.

- *Pace of Hearing Cases.* As data presented early clearly show, the speed with which a case is heard has a strong relationship with the likelihood of a DUI conviction. In every expert panel we hold, some version of the comment is made that “delay is the first tactic in DUI defense.” If the arresting officer moves, leaves law enforcement, or for any other reason becomes unavailable for the hearing then the case is often dismissed. There are other factors that can delay a case, however, including the fact that misdemeanor DUI cases are heard in the lowest courts. If someone involved in the prosecution or defense of the case is needed in a higher court, then that will likely prompt a continuance. Regardless of specifics, the judge can influence the speed with which DUI cases are heard. While we most often heard stories of repeated delays, we also heard stories of judges taking control of the situation and demanding a defense attorney make themselves present at the next available opportunity under any circumstance.
- *Familiarity in the Technicalities of DUI Cases.* The South Carolina DUI statutes are 22 pages long and almost universally considered confusing. There is also an immense amount of case law that has been generated around these statutes for many years. Full understanding of all the complexities is a challenge for every part of the system—officers, prosecutors, and judges. However, required training for summary court judges on handling DUI cases is minimal. New judges go through three hours of training on DUI cases—half presented from a prosecutor and half from a defense attorney. Additional training is available but not always utilized. Given the complexity of the cases, it seems that this level of training is insufficient. This likely contributes to the frequent reports we heard of odd or inconsistent rulings. It should also be noted that South Carolina magistrates are not required to have any legal background to be appointed to that role.

This challenge is heightened with the growing issue of drugged driving. These cases can be even more complex as familiar measurements like Blood Alcohol Content are replaced by less familiar levels of various drugs in the bloodstream that do not always have predictable relationships to impairment. Impairment evidence may come from Drug Recognition Expert officers, of which there are less than 200 in the state, meaning many judges have little to no experience handling their testimony. One officer in the 5<sup>th</sup> Circuit reported that even judges he felt were relatively consistent and predictable for drunk driving cases could seem overwhelmed by a drugged driving case. One officer said a judge they appear before never convicts anyone on a drugged driving charge.

MADD calls upon our summary court judges to show the conviction to take more control over the challenges in DUI prosecution given the devastation that DUI can create within families and communities, our state’s atrocious fatality rankings, and

the disappointing conviction rates shown in our data. We offer a few specific suggestions:

- Seek additional training in DUI cases. The three hours on DUI required for new summary court judges is roughly equivalent to the time it takes one officer to make one DUI arrest. It is simply not enough. Additional training should be provided and taken advantage of, especially to compensate for the increased complexity of the growing number of drugged driving cases.
- Ensure that case delays are not abused as a tactic to avoid a conviction. As outlined above, delays hurt the chances of getting a DUI conviction. Judges should limit the degree to which continuances are allowed as a reflection of the seriousness of this crime. When they sense continuances are being requested as a tactic, they should insist on a trial date being set and adhered to.
- Accept their full influence on the issue. In general, we call on the judiciary to fully appreciate how their decisions and statements affect our overall unacceptable drunk driving problem. While undoubtedly they are dealing with the hand they are dealt with a long and complex set of statutes, they can play a role in improving the sense that DUIs will be dealt with seriously. This can be through the statements they make and penalties they issue reflecting the danger of drunk and drugged driving. It also can be how they deal with pre-trial motions by the defense. It was relayed to us that General Sessions judges show much less patience in dealing with a barrage of pre-trial motions over technicalities. Officers in some parts of the state have relayed to MADD that their judges don't throw out dashcam videos over meaningless flaws in the video, as an example. In the 13<sup>th</sup> Circuit, prosecutors shared that they rarely can get convictions out of DUI arrests made during public safety checkpoints because there is no video of bad driving or a crash. In the 5<sup>th</sup> Circuit, officers reported they have no problem getting convictions from checkpoints.

We also must emphasize drugged driving once again. Drunk driving was once far more socially acceptable than it is today, and that change has saved lives. The judiciary must send a clear message that drugged driving, whether the drug is prescribed or illegal, is just as serious as drunk driving.

We need a sharp distinction from what is a typical "speeding ticket" approach where everyone who cooperates gets cut a break. This is drunk and drugged driving, and we lose almost one person a day in this state.

It is time for greater conviction.

### **A Focus on Our Toothless “Refusal” Law**

When someone applies for a driver’s license in South Carolina, they agree to provide a blood or breath sample if requested by an officer. However, there is also a provision to refuse at the time of that request, but it comes with a penalty—automatic loss of license for six months.

But far too many never face a “true” suspension. South Carolina also has a Temporary Alcohol License for those who have had their license taken for refusing (or blowing over a .15 BAC) that they can receive just a day or so later. It allows for travel to work, school, and treatment, making it very difficult for an officer to determine if they are violating those restrictions as long as they are driving around town. Is this really a suspension?

SLED provided us with data indicating that 40% of people arrested for DUI in South Carolina refuse to blow into the Datamaster machine. The latest information our organization has is that the national refusal rate was 20% in 2011. The 13<sup>th</sup> Circuit Solicitor’s Office believes the refusal rate is much higher than 40% in their area. While perhaps it should not be the case, lack of BAC data does harm the prosecution’s chances for a conviction. Other evidence should be sufficient for a judge or jury, but the reality is that BAC data is often the most convincingly piece of evidence. If someone’s refusing to provide a sample benefits them, they should at least face “real” penalties for refusing.

MADD proposes coupling the Temporary Alcohol License with the Ignition Interlock Device program that already exists for repeat offenders and first-time offenders with a BAC over .15. Installing these “in-car breathalyzers” protects the public as research is very clear that interlocks save lives. In 2018, bills were filed in the Legislature but not passed that would have required ignition interlocks for a) anyone convicted of drunk driving regardless of BAC or number of offenses and b) those with Temporary Alcohol Licenses. This would truly be a life-saving measure that would also mean that refusing to give a breath or blood sample would actually affect someone negatively and may cause them to reconsider the choice of refusing to blow.

We need to show some conviction on the issue of refusals.

### **A Focus on a Lack of Officer Support for Prosecution**

Above, we share that 1) it is not uncommon for law enforcement officers to be the prosecutor for their DUI arrests, though in some areas it is less common than others, and 2) this practice largely does not happen outside of South Carolina.

In discussing this issue with our key experts and key traffic safety partners, the consensus is largely that having officers prosecute their own DUI cases should be greatly reduced or eliminated for the following reasons:

- The time of law enforcement officers is best spent protecting the public not preparing for court, especially to the extent required to be the lead prosecutor.
- Law enforcement officers are not formally trained to prosecute cases as complex as DUI, though many clearly have become very proficient through experience and seeking additional training and support.
- In many cases, the defense will have the representation of a formally trained attorney, leading to a “mismatch” that logically would favor the defense. Our data show officers got a DUI conviction for only one in four cases when facing a defense attorney.

Even an officer who prosecutes all of their own DUI arrests will have less experience prosecuting a DUI case than an attorney prosecutor assigned the DUI arrests of multiple officers, and experience is very important in this arena. Many DUI defense attorneys are very experienced.

The need for greater support for prosecution now is even more important because of the numerous other struggles that the law enforcement profession faces. Many agencies have fewer officer spots than in years past, and many are struggling for sufficient qualified applicants for the ones they do have. Agencies that handle traffic issues frequently speak of being spread very thin across a large area and devoting an ever increasing amount of their time working wrecks rather than proactive enforcement efforts to reduce speeding, drunk driving, etc. Many excellent officers are retiring or getting more quickly promoted to fill supervisory openings, leaving front line officers often younger and less experienced. They may also be supervised and coached by less experienced supervisors than was once the case. Without strong emphasis to promote aggressive enforcement of impaired driving and regular opportunities for continued training, there is risk of more officers deemphasizing this important area given that is so frustrating and time consuming.

Therefore, our suggestion would be for the state to strongly pursue the steps necessary to provide adequate prosecutors for DUI cases in all areas but couple that with a push to address the factors that are leading to high rates of pleas to lesser charges. This could include a combination of legislative changes, namely addressing the dash cam video recording statute discussed above, along with an emphasis on encouraging prosecutors to aggressively prosecute more cases for the original DUI charge. Relatively recent increases in funding for prosecutors (Caseload Equalization) within Solicitor’s offices could help if some of those resources were directed to summary court level DUI prosecution.

We must show the conviction to support our officers so that more than half of their arrests do not end up as lesser charges. They deserve better.

**Sanctions**

To this point, we have discussed primarily the outcome of the DUI cases monitored rather than the penalties issued to those convicted. The question of what is the penalty for a DUI in South Carolina is not a simple one to answer as the sanctions are tiered based on the BAC of the offender and the number of prior offenses.

The tables below, provided by the state’s Traffic Safety Resource Prosecutor, summarize DUI penalties in the most efficient manner possible.

**FIRST OFFENSE:**

<b>Refusals and BACs <u>below</u> 0.10%</b>	<b>BACs from 0.10% Through 0.15%</b>	<b>BACs of 0.16% and above</b>
<b><u>Mandatory minimum:</u> 48 hours in jail; <u>or</u> 48 hours Public Service; <u>or</u> \$400 fine</b>	<b><u>Mandatory minimum:</u> 72 hours in jail; <u>or</u> 72 hours Public Service; <u>or</u> \$500 fine</b>	<b><u>Mandatory minimum:</u> 30 days in jail; <u>or</u> 30 days Public Service; <u>or</u> \$1,000 fine</b>
<b>Up to a maximum of 30 days in jail</b>	<b>Up to a maximum of 30 days in jail</b>	<b>Up to a maximum of 90 days in jail</b>

*\*\*New provision under §56-5-2930 (K) provides for magistrates court jurisdiction for all DUI charges carrying a maximum penalty of 90 days or less.*

**SECOND OFFENSE:**

Refusals and BACs <u>below</u> 0.10%	BACs from 0.10% Through 0.15%	BACs of 0.16% and above
<u>Mandatory minimum:</u> 5 days in jail <u>and</u> \$2,100 fine <i>(May suspend fine to \$1,100)</i>	<u>Mandatory minimum:</u> 90 days in jail <u>and</u> \$5,000 <i>(May suspend fine to \$1,100)</i>	<u>Mandatory minimum:</u> 90 days in jail <u>and</u> \$3,500 <i>(May suspend fine to \$1,100)</i>
<u>Max</u> 1 year <u>and</u> \$5,100 fine	<u>Max</u> 2 year <u>and</u> \$5,500 fine	<u>Max</u> 3 years <u>and</u> \$6,500 fine

**THIRD OFFENSE:**

Refusals and BACs <u>below</u> 0.10%	BACs from 0.10% through 0.15%	BACs of 0.16% and above
<u>Mandatory minimum:</u> 60 day in jail <u>and</u> \$3,800 <i>(May suspend fine to \$2,100)</i>	<u>Mandatory minimum:</u> 90 days in jail <u>and</u> \$5,000 <i>(May suspend fine to \$2,500)</i>	<u>Mandatory minimum:</u> 6 months in jail <u>and</u> \$7,500 <i>(May suspend fine to \$3,500)</i>
<u>Max:</u> 3 years <u>and</u> \$6,300 fine	<u>Max:</u> 4 years <u>and</u> \$7,500	<u>Max:</u> 5 years <u>and</u> \$6,500

**FOURTH OFFENSE:**

Refusals and BACs <u>below</u> 0.10%	BACs from 0.10% through 0.15%	BACs of 0.16% and above
<u>Mandatory minimum:</u> 1 YEAR	<u>Mandatory minimum:</u> 2 YEARS	<u>Mandatory minimum:</u> 3 YEARS
<u>Max</u> 5 YEARS	<u>Max</u> 6 YEARS	<u>Max</u> 7 YEARS

§56-5-2940 was *repealed*. The *penalties* for DUI and DUAC are now contained in the respective statutes (§ 56-5-2930 and §56-5-2933).

**DL Suspension Periods for Refusals and 0.15% or higher BACs.**

<b>If w/in 10 years preceding current violation:</b>	Subject has been convicted of DUI (56-5-2930), DUAC (56-5-2933), Felony DUI (56-5-2945), <i>or any other law of this or another State that prohibits a person from driving under the influence.</i>	<b>or</b>	Subject has a previous suspension imposed pursuant to 56-5-2950 or 56-5-2951 (BAC of 0.15% or greater and Refusals)
<b>Suspension Period Imposed for:</b>			
	<b>Refusals</b>	<b>BAC of 0.15% or higher.</b>	
<b>No priors</b>	<b>6 months</b>	<b>1 month</b>	
<b>Second Offense</b>	<b>9 months</b>	<b>2 months</b>	
<b>Third Offense</b>	<b>12 months</b>	<b>3 months</b>	
<b>Fourth + Offense</b>	<b>15 months</b>	<b>4 months</b>	

**§56-5-2951(I)**

**Changes in § 56-5-2930 (DUI), § 56-5-2933 (DUAC) and § 56-5-2942 (Vehicle Immobilization) make it clear that a DUAC convicted will be considered to be a prior offense for DUI and that a DUI conviction will be considered to be a prior offense for DUAC.**

The cases we focus on are first offense misdemeanors. After reviewing the sanctions data, most of the fines we saw fell somewhere between \$400 and \$1300. Requests for installment payments are generally granted by a judge in order to give a defendant the opportunity to pay off their fine rather than having to pay all of the money the day of court. Many offenders are also ordered to the Alcohol and Drug Safety Action Program (ADSAP), a requirement for license reinstatement, although not all are. Jail time was ordered in only a very small number of cases.

An important sanction for MADD are Ignition Interlock Devices (IIDs). MADD is a strong champion of strong IID programs for states. We were active in the push for Emma's Law in 2014 that expanded IIDs from repeat offenses only to also first offense DUI cases, but only if the BAC is .15 or higher.

Our Court Monitoring Specialists report never hearing a judge/magistrate ordering an IID in any case she attended. We also found few indications of an IID order in the online records.

Though it does not "show up" in these court monitoring data, MADD SC is concerned to hear numerous reports from across the state that getting out of the IID requirement is the new "bargaining chip" in DUI pleas. We have heard frequent anecdotes that those arrested for BAC's over .15, which should qualify for an IID, are being offered plea deals where they agree to plead guilty to DUI but at a BAC below .15. While we understand the frustrations prosecutors face in getting DUI convictions in South Carolina, these type of arrangements eliminate the life-saving impact of the IID program, which is well documented. This is one of many reasons that MADD will continue to push for a

strengthening of Emma’s Law so that all DUI offenders, regardless of BAC, are ordered into the IID program, as 30 states and the District of Columbia have now done.

### **Conclusions and Recommendations**

In summary of the above data, we put forth the following as the most compelling aspects:

- A multitude of factors result in the disappointing reality that less than half of the cases we monitored ended up as a DUI conviction. It is unthinkable that half of those arrested for DUI are not actually guilty of driving impaired.
- Officers and prosecutors reported several challenging aspects to dealing with DUI cases in summary courts. These include great variation in how rulings are made (including pre-trial motions), familiarity with technical aspects of the DUI statutes, and, in general, attitudes toward DUI convictions.
- Required training on DUI cases for summary court judges is minimal yet is one of the most complex section of statutes.
- Drugged driving is an ever increasing issue, yet it brings even higher levels of complication in legal proceedings as it evolves. This even further supports the need for regular training on presiding over these cases.
- There is a strong correlation between the likelihood of a DUI conviction and the speed with which the case comes to a final disposition. There should be an increased recognition of the tactic of delaying cases in hopes obstacles, such as an officer leaving the agency or the profession, will arise for the prosecution. Judges can exert greater influence over this.
- Our “refusal” law is toothless and contributes to a high rate of those arrested for DUI in South Carolina choosing to refuse providing a breath or blood sample. The Temporary Alcohol License process should be tied to the state’s Ignition Interlock Device program so that those who are driving after a license suspension for refusing are “blowing sober,” which protects the public from repeat offenses.
- Few people in South Carolina are being ordered into the state’s Ignition Interlock Device program. The law should be changed so that all DUI offenders receive an interlock upon conviction and are allowed to drive—but they will drive sober. 30 states have passed a law like this.

- Law enforcement officers already face too many challenges to do their jobs well, and they need adequate support for DUI prosecution. Our data show officers often do not fare well when they are asked to prosecute their own cases up against a defense attorney. This is not what they were trained for, and many officers find this a frustrating and discouraging aspect of their job. There is no telling what impact this has on decreased DUI arrests or situations where a DUI charge is not written in lieu of an easier charge to make and prosecute.
- The state's dashcam video statute is a root cause of many cases being pled down to lesser charges. It is highly problematic and frustrating for those involved in prosecution and enforcement. It is in great need to being rewritten so that other evidence can be considered even when there is a shortcoming in the video.

Within each of the groups that make up the key parts of our DUI prosecution system (officers, prosecutors, and judges/magistrates), we have found that there are many with a genuine concern for the tragic impact that drunk and drugged driving can have on individuals, families, and communities. Many are doing the absolute best they can given their resources and circumstances. However, we call on all these groups, and the legislature, to do more because South Carolina continues to rank toward the bottom of states in regard to drunk driving, and we deserve better.

**Judges/Magistrates:** Despite the fact that few cases are actually having a determination made by a judge or jury because a plea has already been worked out, undoubtedly judges and magistrates have played a role in creating the current culture. A solicitor that frequently pleas down cases may be doing so based on past experience with a judge that was found to be hesitant to rule guilty or was likely to side with the defense on challenges to the dash cam recording. Within their interpretation of the law, judges and magistrates have the opportunity to reemphasize the significance of drunk driving on the community through how they approach cases and issue penalties. Not all areas of the state deal with the same challenges from their judiciary, so the problematic law is not the entire reason there are low conviction rates. Judges also can seek more training on handling DUI cases, especially drugged driving cases, and can ensure that cases are heard swiftly.

Certain areas could also consider systematic changes to assist with efficient and appropriate handling of DUI cases. One idea proposed would be to channel more DUI cases through judges with greater experience and training. Such ideas could speed up how all cases are dealt with because prosecutors and defense attorneys are more familiar with how a judge rules, and pre-trial motions could be dealt with quicker. Another option is DUI docket "blitzes," which sometimes happen in the 13<sup>th</sup> Circuit, where a jurisdiction will focus on getting through a high number of DUI cases in a given week to avoid a backlog.

**Legislature:** There are numerous changes that are needed to South Carolina's laws that could potentially reduce our status as one of the worst states in the nation for drunk driving. Relevant to these data, we call on the legislature to pass:

- An all-offender Ignition Interlock Device law that would keep us all safe by requiring DUI offenders to "blow sober" before starting their cars for some period of time and also includes those who receive a Temporary Alcohol License after refusing to give a breath or blood sample to enforcement
- A revised version of the state's dash cam video recording statute so that a flawed video does not rule out all of the other evidence coming into play in the case.

In addition, legislators can put greater emphasis on legal experience in the appointment of magistrates. DUI cases are complex for even judges with legal backgrounds, much less those without such experience.

These issues have been raised to the legislature in the past and have had some level of interest. It is time to make change happen.

**Prosecutors:** Prosecuting a DUI is quite difficult in South Carolina. We understand that in each case, the prosecutor typically has the best overall perspective on what is the best way to handle that case given the quality of the investigation and their experience with the local judges and juries. However, we cannot look at the overall rate of pleas to lesser charges and feel satisfied. Every prosecution agency should reexamine the aggressiveness with which they pursue convictions and recognize that on a community-level scale a low conviction rate endangers public safety as offenders are facing lesser penalties and perhaps avoiding important sanctions like Ignition Interlock Devices. Agencies could consider internal review procedures that require a close look at each case with a reckless driving plea and determine whether that case could have been won. It may even be a better overall result to lose more cases completely if it also means getting more DUI conviction rates over reckless driving pleas.

**Law Enforcement:** Regardless of the outcome of the criminal case, officers are doing the right thing when they arrest someone they believe is impaired and get them off the road. They could be saving lives. As we discussed, our state makes it far too difficult to conduct a solid DUI investigation, yet for now these are the laws we have. Officers must seek quality training on DUI arrest procedures and put it to use in the field. Failure to adhere to the requirements, at least those that under their control, likely will cause the driver to not face the full level of accountability they deserve, which jeopardizes future public safety. MADD is grateful for the advanced training made available by the South Carolina Criminal Justice Academy and resources like our State Traffic Safety Resource Prosecutor.

## **Remaining Questions and Future Focus**

In many ways, our court monitoring data raises as many questions as it answers. Much of this is due to the fact that we see the outcome of the case but do not have access to all of the details that lead to the final determination.

As we continue to monitor cases, and already have been beyond the data cut-off we set to analyze for this report, we will focus on some of the following questions:

- Will any of our findings continue to change as we review a larger number of cases over time?
- Can we find ways to be in the courtroom more often vs. online monitoring within our capacity, especially by improved volunteer recruitment?
- Does the trend, shown in limited data thus far, hold or increase that conviction rates are higher when MADD court monitors are present?
- Can we better track the level of BAC that the person is 1) initially being charged with and 2) found guilty of? In South Carolina, sanctions vary by category of BAC, but our data are not capturing that specific level.
- Do any public discussions potentially prompted by the release of these data seem to have any impact on conviction or plea rates or on some of the systemic issues that are often attributed for having to plea down cases?
- Is South Carolina ready to consider more radical changes to enforcement techniques, such as the use of roadside Portable Breath Test devices, which past discussions have shown can generate mixed reactions?
- Will our perception of these data change as we eventually have data from Horry, Berkeley, and Charleston counties as well?

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