



NEW MEXICO

COURT MONITORING PROJECT

Year One Report

July 2016-July 2017

Released: November 20, 2017

Funded through a contract with the New Mexico Department of Transportation, Traffic Safety

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TABLE OF CONTENTS

Introduction and Method.....	2
Comprehensive Data Summary	3
Bernalillo County Overview	4
Bernalillo County Dismissal Analysis	5
Doña Ana County Overview.....	6
Doña Ana County Dismissal Analysis	7
McKinley County Overview.....	8
McKinley County Dismissal Analysis	9
Rio Arriba County Overview.....	10
Rio Arriba County Dismissal Analysis	11
San Juan County Overview.....	12
San Juan County Dismissal Analysis	13
Santa Fe County Overview	14
Santa Fe County Dismissal Analysis	15
Key Findings and Recommendations	16
Glossary	17
Appendix.....	18

NEW MEXICO DWI COURT MONITORING PROJECT

Year One Report- July 2016 through July 2017

Released: September 18, 2017

Prepared by: Mothers Against Drunk Driving

INTRODUCTION

Mothers Against Drunk Driving has a longstanding history of leading the fight to eliminate drunk and drugged driving. MADD's Court Monitoring Program has become widespread with its implementation in several states throughout the country. The goals of the program are threefold:

1. To compile pertinent information on how DWI cases are handled in the courtroom.
2. To elicit public interest in the management and outcome of DWI cases in the community by publishing annual findings locally and contributing to an annual report released by MADD National.
3. To report relevant information gathered by the project to appropriate entities in an effort to increase the efficiency of the judicial process.

The New Mexico DWI Court Monitoring Project began in July of 2016 and reports in six New Mexico counties to include: Bernalillo, Doña Ana, McKinley, Rio Arriba, San Juan, and Santa Fe. The Project is funded through a contract with the New Mexico Department of Transportation. The Court Monitors spent an average of 12 days in court per month, monitoring a total of 1,721 cases in the July 2016-July 2017 reporting dates. Of the total cases monitored, 1,106 were adjudicated and included in this Year One Report.

Throughout the first year, bi-weekly reports were shared with the New Mexico Department of Transportation beginning August of 2016. A total of 24 reports were given to NMDOT that included the sanctions, prior DWI's, and dispositions of the cases that were adjudicated in the previous two week period. These reports also stated individual case outcome details and a list of accrued adjudicated cases to date.

In the past year, MADD Representatives met with the New Mexico Department of Transportation seven times regarding the New Mexico DWI Court Monitoring Program and also attended seven NM DWI events. The Court Monitors participated in seven training seminars in the past year and attended twelve monthly meetings conducted by the Project Supervisor.

Relative to the third goal of the program, representatives from both MADD and NMDOT met with the District Attorney Offices of the monitored counties to share pertinent findings and establish a partnership to improve local judicial processes. A synopsis of these meetings is included in each county summary. The annual disposition statistics for 2016, as published by the Administrative Office of the Courts (AOC), are also listed for each corresponding county to capture the accurate annual disposition percentages as compared to the sample pool the Project monitored.

Also included in each county summary is a chart detailing the different reasons for dismissals for the monitored cases. The monitors derived this information from meeting with District Attorney Offices, being present in court during the time of the dismissal, viewing court files, and reviewing their notes to determine reasons that led to the dismissal.

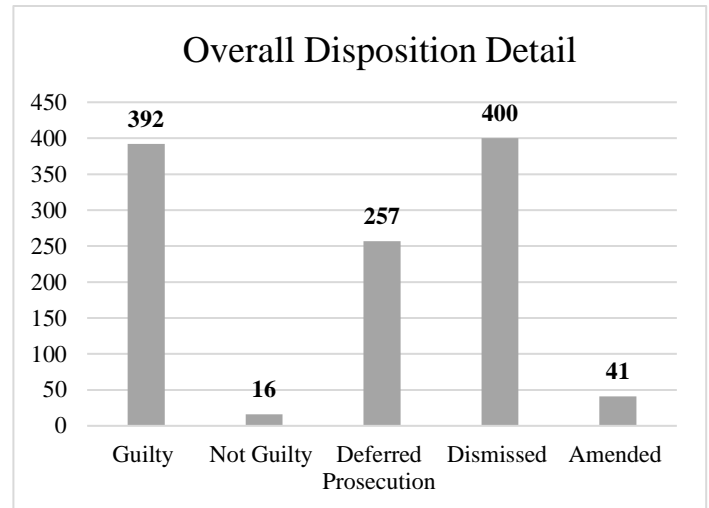
METHOD

The Court Monitors monitor misdemeanor DWI cases in the Magistrate courts of their respective counties. The monitors are physically present for court settings and acquire case information from courtroom observation and, when necessary, from researching online databases in the event a monitor is not able to be present at the proceeding. The data is then entered into the MADD National Court Monitoring Database for reporting purposes.

This report is designed to present observations and trends relative to the six counties monitored, and are not intended to be a statistical analysis.

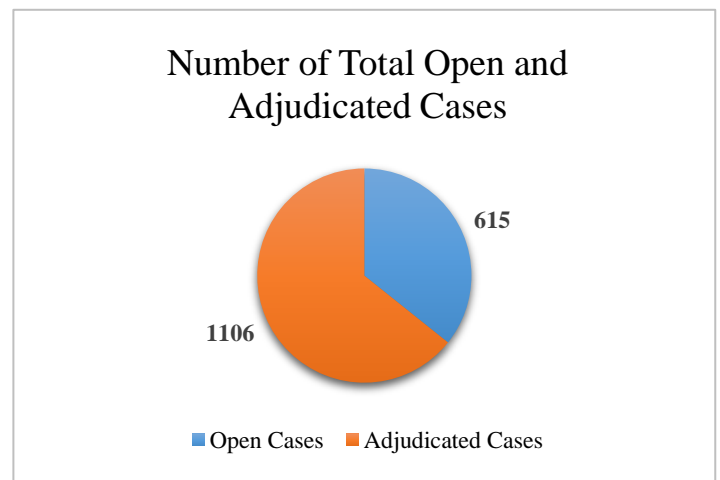
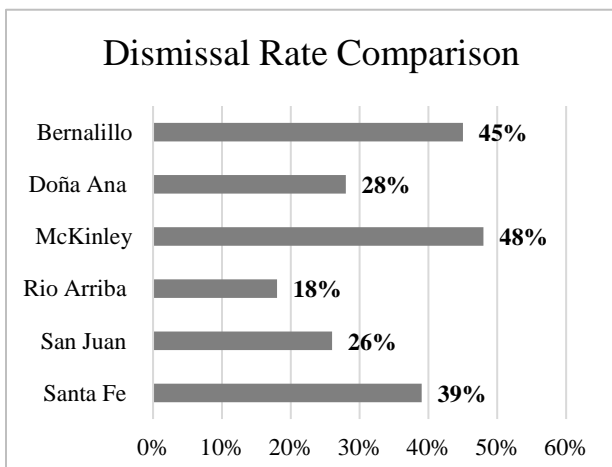
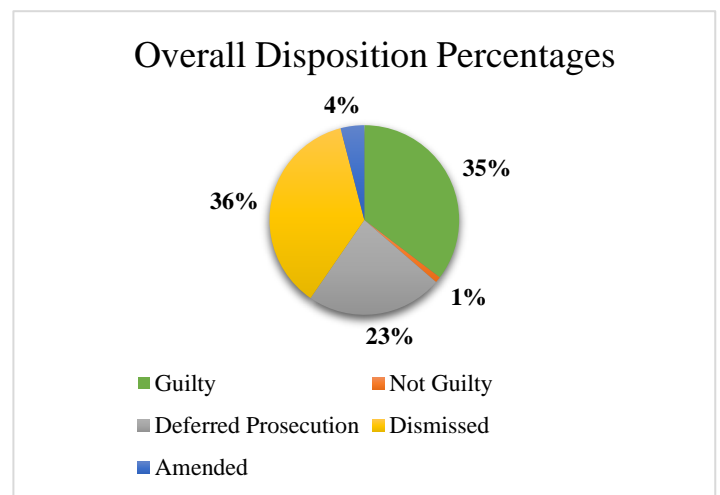
COMPREHENSIVE DATA SUMMARY

	-Actual-	-Total %!
Total Cases Monitored	1,721	-
Total Adjudicated	1,106	64%
Total Guilty	392	35%
Total Not Guilty	16	1%
Total Deferred Prosecution ²	257	23%
Total Dismissed	400	36%
Total Amended ³	41	4%



Top 3 Reasons for Dismissal

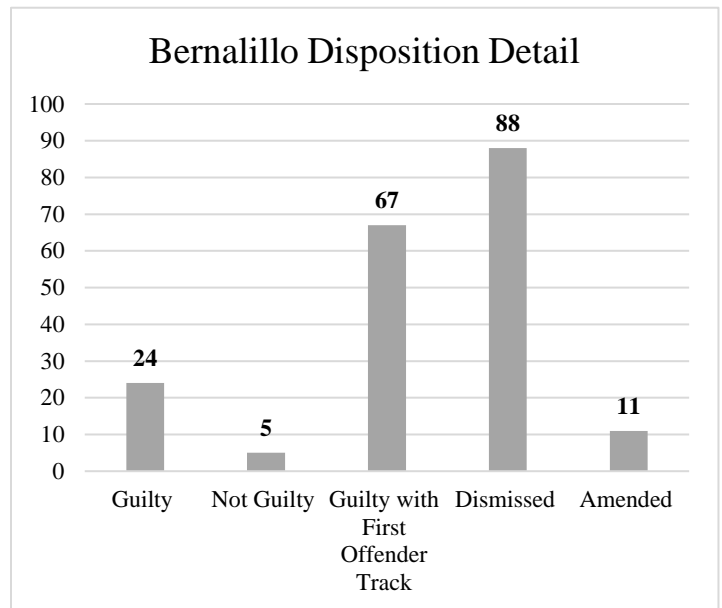
	# of Cases	Total Dismissal Percentage
Officer/Witness Failure to Appear	77	19%
Suppression or Exclusion of Testimony or Evidence	74	18.5%
Plea Deal	33	8%



BERNALILLO COUNTY

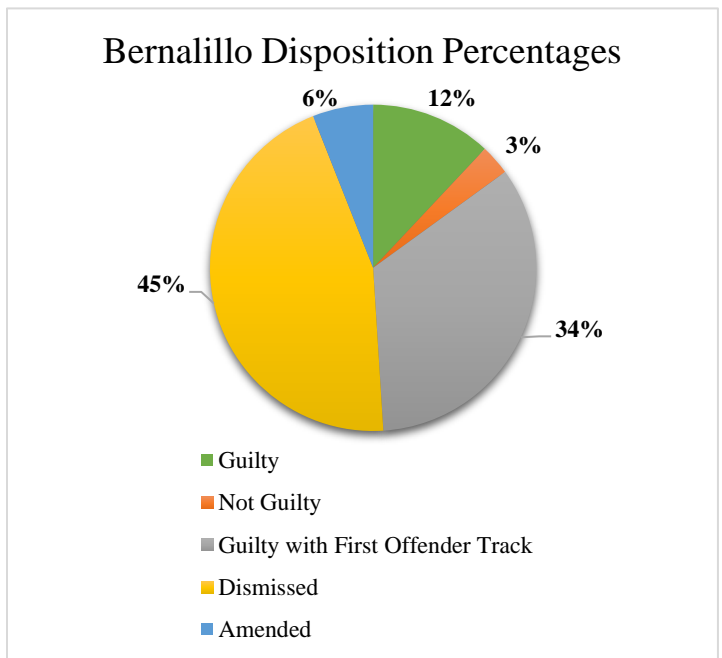
July 2016-July 2017

	-Actual	-Total %	-AOC %
Cases Monitored	301	-	-
Adjudicated	195	-	2,678
Guilty	24	12%	44.9%
Not Guilty	5	3%	2.4%
Guilty with First Offender Track	67	34%	-
Dismissed	88	45%	52.4%
Amended	11	6%	-

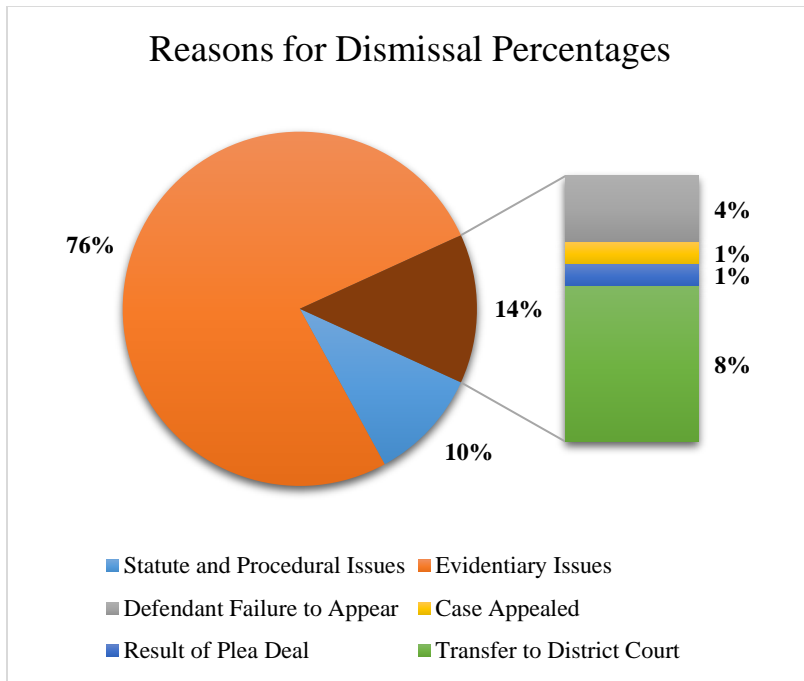


District Attorney Meeting Summary:

The MADD Project Supervisor and representative from NMDOT met with the Bernalillo District Attorney Office on August 2 and August 10, 2017 to discuss the year one data. Strategies to lower the dismissal rate were discussed including the increase of staff attending Pre-Trial Interviews and an increase in the number of prosecuting attorneys. The Public Defender’s Office is able to assign two attorneys per courtroom in Metropolitan court and was stated as a large disadvantage to the State.



BERNALILLO DISMISSAL ANALYSIS



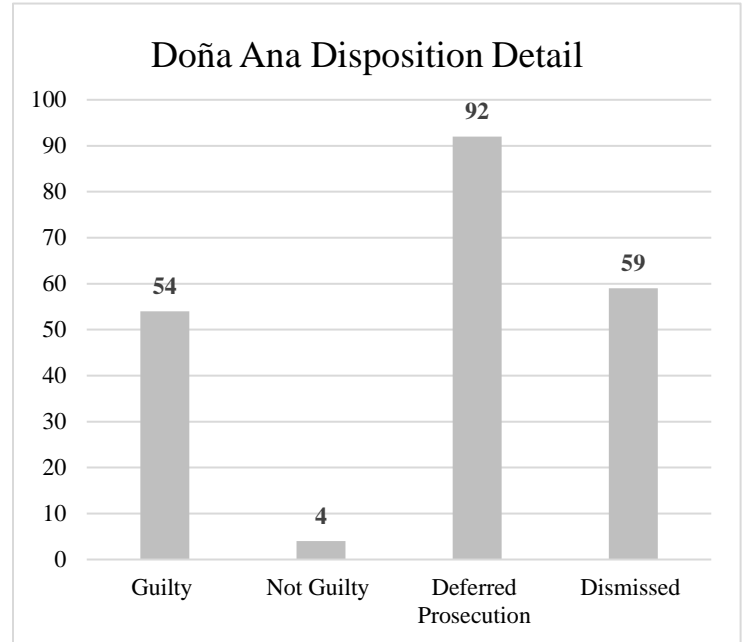
Observations:

- 41% of dismissals were due to Officers failing to appear. Further investigation into the current process may be prudent in identifying the areas that need attention and resources.
- Per the recent Case Management Pilot Program for Criminal Cases applicable in Bernalillo County, strict deadlines imposed on Discovery are often not met due to the lack of training on evidence databases (evidence.com) and the miscommunication between Law Enforcement, Defense, and Prosecutors in reference to the evidence database. Promulgating information on use of these databases in a more efficient manner to prevent further delays in prosecution may lower dismissals.
- A high number of dispositions are Guilty with First Offender Track. Lowering the number of these dispositions would help to increase the penalties for a conviction.

Reasons for Dismissal Detail	
Statute and Procedural Issues	9
<i>10-Day Rule (See Rule LR2-400(A) NMRA)⁴</i>	<i>1</i>
<i>45-Day Rule (See Rule 7-504(B) NMRA)⁵</i>	<i>1</i>
<i>6-Month Rule (See Rule 6-506(B) NMRA)⁶</i>	<i>3</i>
<i>Complaint Filed Incorrectly</i>	<i>3</i>
<i>Necessary Officer not on Witness List</i>	<i>1</i>
Evidentiary Issues	67
<i>Civilian Witness Failure to Appear</i>	<i>3</i>
<i>Insufficient Evidence from Officer</i>	<i>10</i>
<i>Officer Failure to Appear</i>	<i>37</i>
<i>Officer Failure to Appear Due to FMLA, Training, Illness⁷</i>	<i>9</i>
<i>Officer No Longer Working with Department</i>	<i>1</i>
<i>Suppression/Exclusion of Blood Test</i>	<i>2</i>
<i>Suppression/Exclusion of Breath Card</i>	<i>1</i>
<i>Suppression/Exclusion of Civilian Witness Testimony</i>	<i>1</i>
<i>Suppression/Exclusion of Officer Testimony</i>	<i>3</i>
Defendant Failure to Appear	3
<i>Defendant Deceased</i>	<i>1</i>
<i>Defendant Detained by ICE</i>	<i>2</i>
Case Appealed	1
Result of Plea Deal	1
Transfer to District Court	7

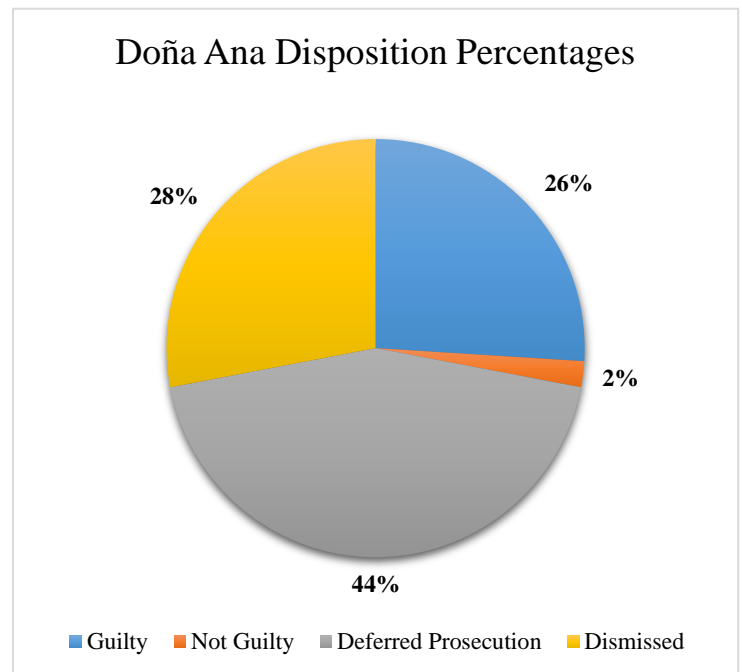
DOÑA ANA COUNTY July 2016-July 2017

	-Actual	-Total %	-AOC %
Cases Monitored	372	-	-
Adjudicated	209	-	1,043
Guilty	54	26%	78.2%
Not Guilty	4	2%	0.9%
Deferred Prosecution	92	44%	-
Dismissed	59	28%	20.9%

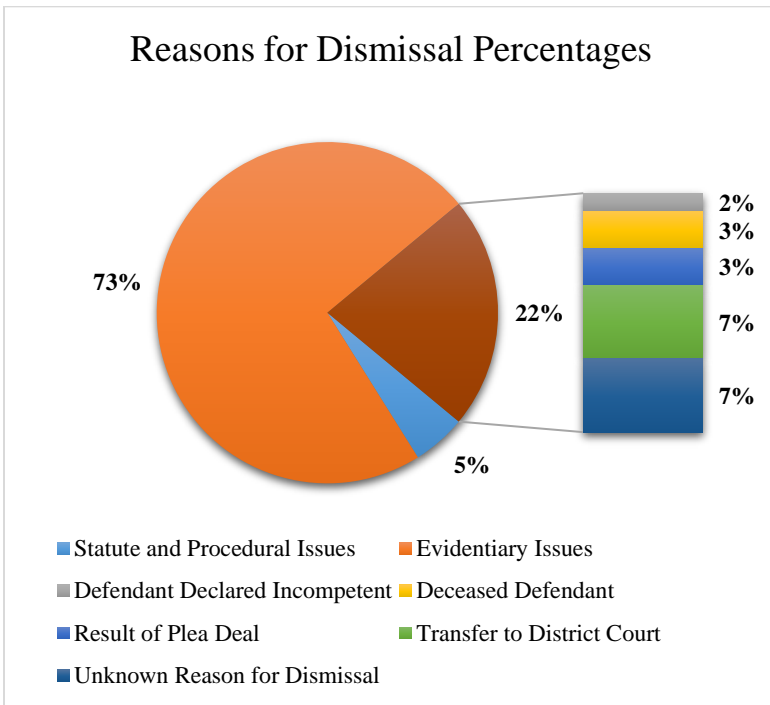


District Attorney Meeting Summary:

The MADD Project Supervisor and a representative from NMDOT met with the District Attorney for Doña Ana County on July 24, 2017 to discuss the overall trends and observations in Doña Ana County. The District Attorney noted a slow turnover rate of prosecuting attorneys as a contributing factor to the high deferred and guilty conviction rate. A subsequent meeting will be held with the Magistrate Court Supervising Attorneys to discuss the specific reasons for dismissals and solutions to these issues.



DOÑA DONA DISMISSAL ANALYSIS

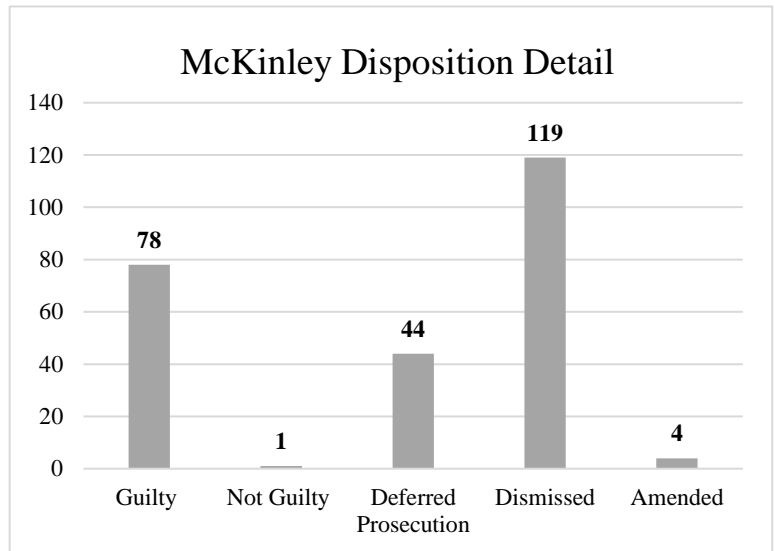


Reasons for Dismissal Detail	
Statute and Procedural Issues	3
<i>45-Day Rule</i>	2
<i>6-Month Rule</i>	1
Evidentiary Issues	30
<i>BAC Below .08</i>	6
<i>Jurisdiction⁸</i>	1
<i>Officer No Longer Working with Department</i>	1
<i>Suppression/Exclusion of Blood Test</i>	2
<i>Suppression/Exclusion of Breath Test</i>	1
<i>Suppression/Exclusion of Field Sobriety Tests</i>	1
<i>Suppression/Exclusion of Traffic Stop</i>	9
<i>Suppression/Exclusion of Unspecified Evidence</i>	4
<i>Insufficient Unspecified Evidence from Officer</i>	5
Failure to Appear	13
<i>Officer Failure to Appear</i>	6
<i>Unspecified Witness or Officer Failure to Appear</i>	7
Defendant Declared Incompetent	1
Deceased Defendant	2
Result of Plea Deal	2
Transfer to District Court	4
Unknown Reason for Dismissal	4

- Observations:**
- The majority of Defendants that are convicted of DWI receive only the minimum sentence as defined by New Mexico State law. It may be productive to explore issuing harsher sanctions instead of maintaining a standard of ordering the minimum sanctions.
 - A high number of dispositions are Deferred Prosecution. Lowering the number of Deferred Prosecution dispositions would help to increase the penalties for a conviction.

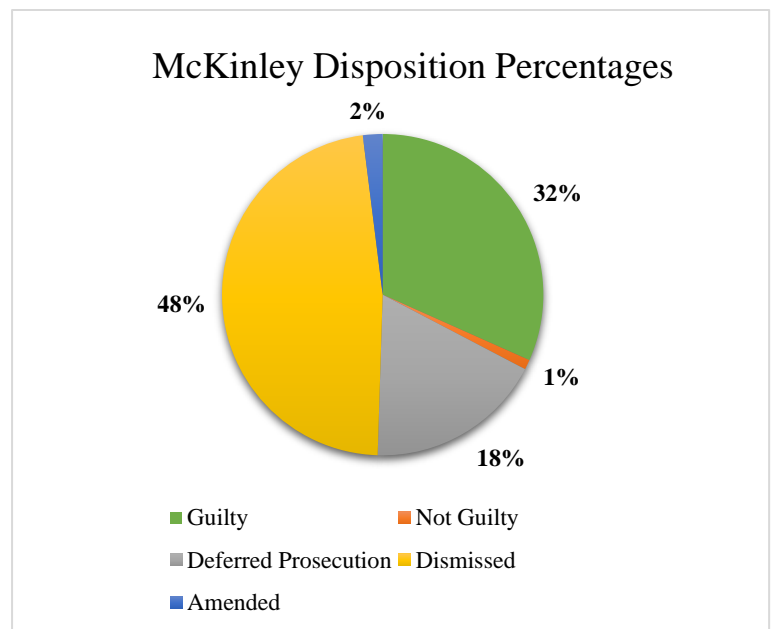
MCKINLEY COUNTY July 20116-July 2017

	-Actual	-Total %	-AOC %
Cases Monitored	380	-	-
Adjudicated	246	-	497
Guilty	78	32%	54.1%
Not Guilty	1	1%	4%
Deferred Prosecution	44	18%	-
Dismissed	119	48%	41.9%
Amended	4	2%	-

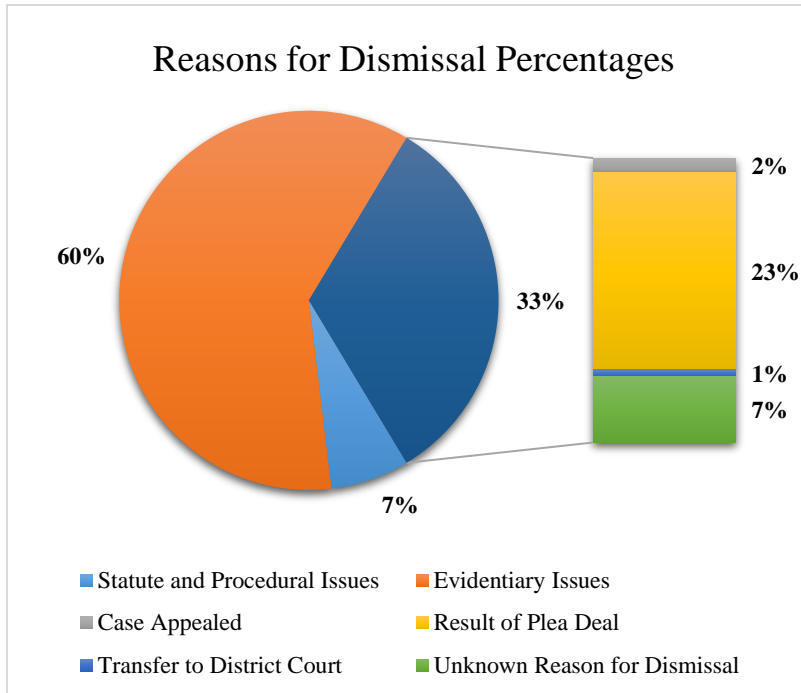


District Attorney Meeting Summary:

The MADD Project Supervisor and a representative from NMDOT met with staff from the Division 2, 11th Judicial District Attorney's office on July 31, 2017. The prosecution obstacles unique to the 11th district were discussed. Jurisdiction issues account for 8% of the cases that are dismissed. The difficulties of executing the current Cross Commissioned agreement were expressed. Adding additional staff to oversee the Discovery exchange process, the scheduling of pre-trial interviews, and to attend pre-trial interviews was stated as being a productive step forward. Officers leaving their Law Enforcement Agency account for 16% of dismissals. Increasing subpoena use and employing bench warrants were stated as possible remedies to this dismissal issue.



MCKINLEY DISMISSAL ANALYSIS



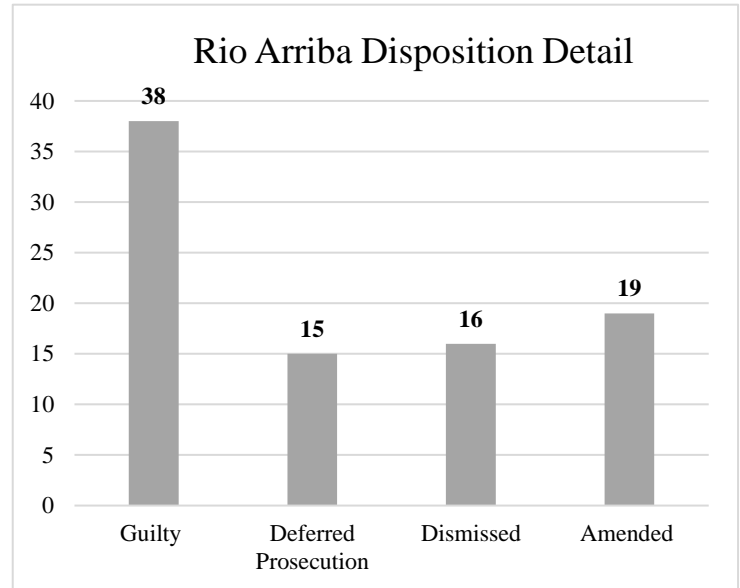
Observations:

- 15% of the dismissed cases were due to an Officer no longer working with the police agency they did at the time of the arrest. Increased use of bench warrants and subpoenas may help to increase the attendance of these key witnesses in cases.
- 16% of the dismissed cases were due to Officers failing to appear. Further investigation into the current process may be prudent in identifying the areas that need attention and resources.

Reasons for Dismissal Detail	
Statute and Procedural Issues	8
<i>6-Month Rule</i>	8
Evidentiary Issues	53
<i>BAC below .08</i>	4
<i>Identity of Defendant Unknown</i>	1
<i>Jurisdiction</i>	9
<i>Lack of Law Enforcement Cooperation</i>	4
<i>Lack of State Investigation</i>	5
<i>Officer No Longer Working with Department</i>	18
<i>Suppression/Exclusion of Blood Test</i>	1
<i>Suppression/Exclusion of Traffic Stop</i>	2
<i>Suppression/Exclusion of Unspecified Evidence</i>	9
Failure to Appear	19
<i>Officer Failure to Appear</i>	12
<i>Unspecified Witness or Officer Failure to Appear</i>	7
Case Appealed	2
Result of Plea Deal	27
Transfer to District Court	1
Unknown Reason for Dismissal	9

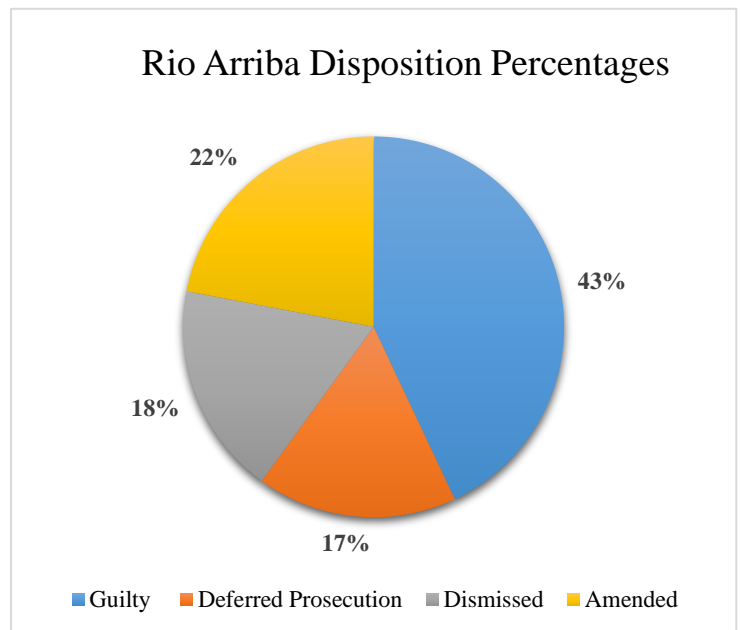
RIO ARRIBA COUNTY July 2016-July 2017

	-Actual	-Total %	-AOC %
Cases Monitored	142	-	-
Adjudicated	88	-	246
Guilty	38	43%	45.1%
Not Guilty	0	0%	0.8%
Deferred Prosecution	15	17%	-
Dismissed	16	18%	54.1%
Amended	19	22%	-

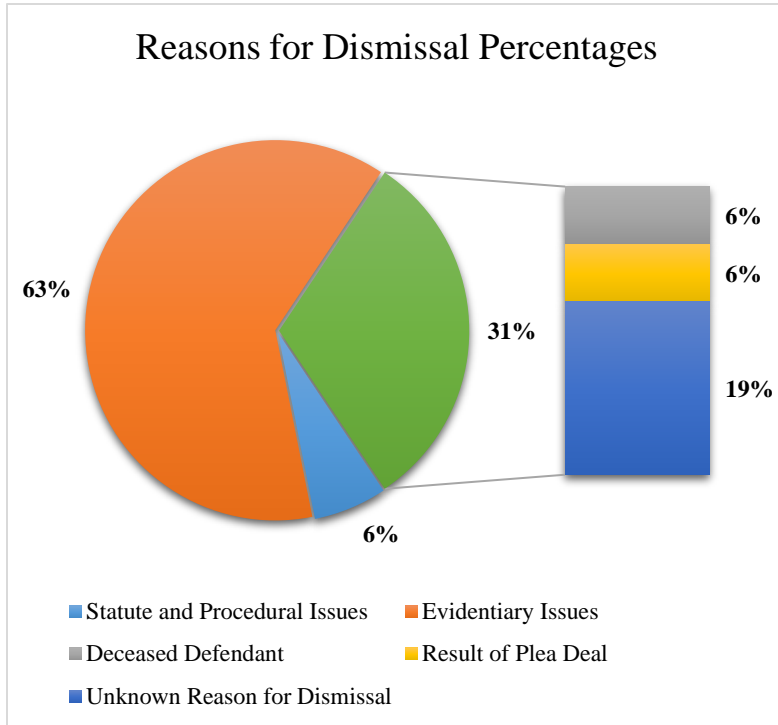


District Attorney Meeting Summary:

The MADD Project Supervisor and a representative from NMDOT met with the District Attorney from the First Judicial District on August 1, 2017. The First Judicial District includes both Santa Fe and Rio Arriba County. A summary of data applicable to both counties was shared. State-wide solutions were discussed including cross-training and increased Law Enforcement training. A state-wide electronic database of DWI prior convictions was proposed as a solution to the current cumbersome prior conviction research process.



RIO ARRIBA DISMISSAL ANALYSIS



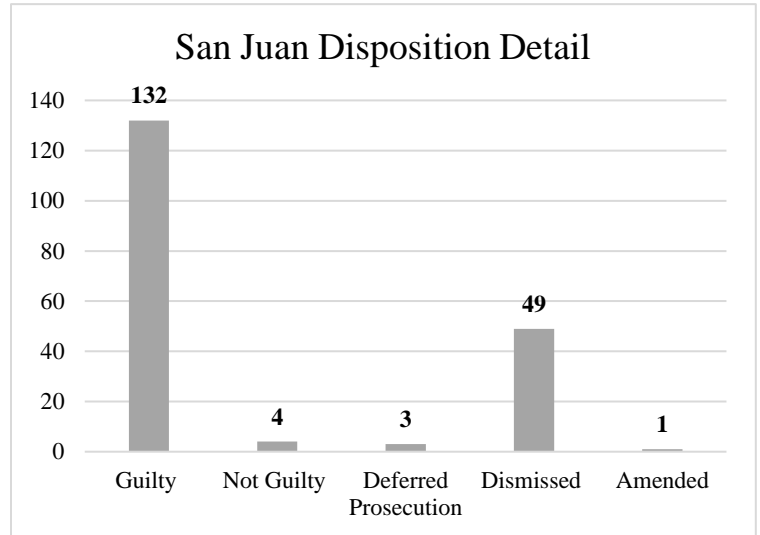
Observations:

- 21% of the monitored adjudicated cases were amended from a DWI charge to a lesser Reckless or Careless Driving charge. A decrease in these amended cases equates to harsher sanctions and consequences.
- A high number of dispositions are Deferred Prosecution. Lowering the number of Deferred Prosecution dispositions would help to increase the penalties for a conviction.

Reasons for Dismissal Detail	
Statute and Procedural Issues	1
<i>6-Month Rule</i>	<i>1</i>
Evidentiary Issues	10
<i>BAC Below .08</i>	<i>2</i>
<i>Missing Blood Test</i>	<i>1</i>
<i>Missing Pre-Trial Interview</i>	<i>1</i>
<i>Suppression/Exclusion of Officer Evidence</i>	<i>2</i>
<i>Suppression/Exclusion of Officer Testimony</i>	<i>2</i>
<i>Insufficient Unspecified Officer Evidence</i>	<i>2</i>
Deceased Defendant	1
Result of Plea Deal	1
Unknown Reason for Dismissal	3

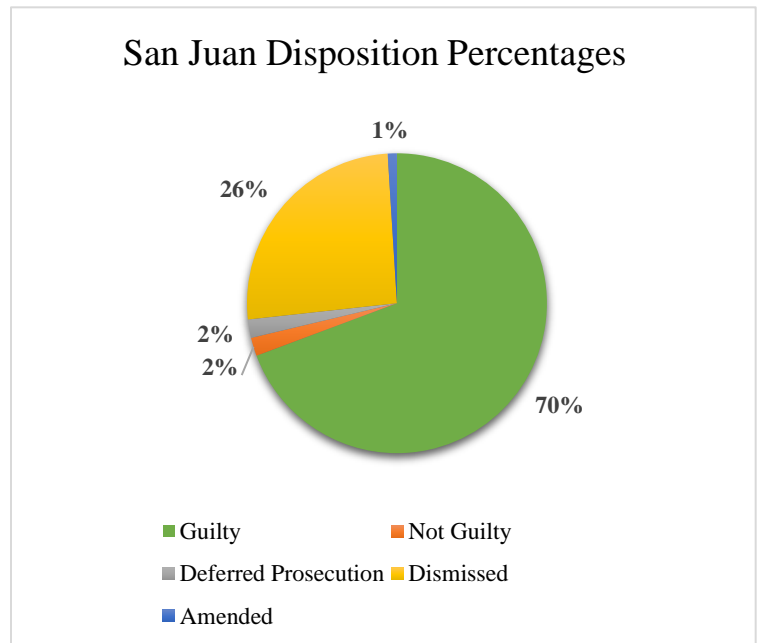
SAN JUAN COUNTY July 2016-July 2017

	-Actual	-Total %	-AOC %
Cases Monitored	285	-	-
Adjudicated	189	-	523
Guilty	132	70%	79.4%
Not Guilty	4	2%	1.0%
Deferred Prosecution	3	2%	-
Dismissed	49	26%	19.7%
Amended	1	1%	-

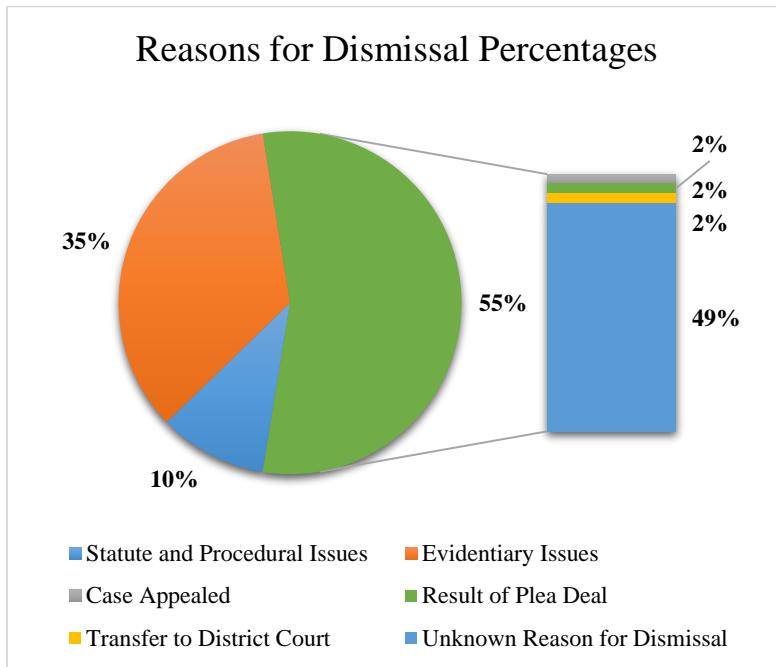


District Attorney Meeting Summary:

The MADD Project Supervisor and two representatives from NMDOT met with the Division 2, 11th Judicial District Attorney on July 16, 2017. A summary of the data was shared and prosecution challenges of San Juan County were discussed. Statute obstacles including the Birchfield case in relation to blood draws and the possibility of increased Law Enforcement training to ensure legal stops and legal blood draws were discussed. The Division 2, 11th Judicial District Attorney's Office employs the use of a physical database of all DWI prior conviction documentation for ease in prior DWI research for current cases. San Juan also has the highest conviction rate of all six counties observed in the Project.



SAN JUAN DISMISSAL ANALYSIS



Observations:

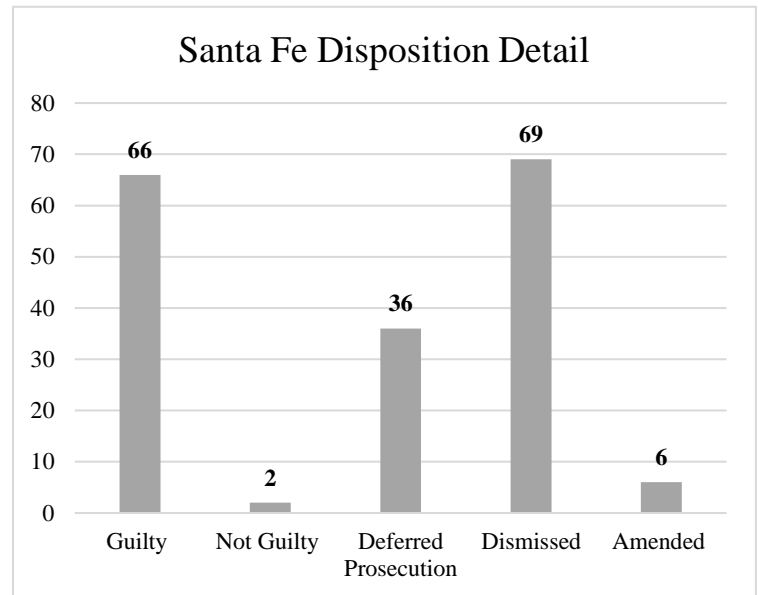
- Over 16% of cases were dismissed due to illegal stops and blood draw issues.
- The majority of Defendants that are convicted of DWI receive only the minimum sentence as defined by New Mexico State law. It may be productive to explore issuing harsher sanctions instead of maintaining a standard of ordering the minimum sanctions.

Reasons for Dismissal Detail	
Statute and Procedural Issues	5
<i>6-Month Rule</i>	5
Evidentiary Issues	17
<i>BAC Below .08</i>	1
<i>Blood Test</i>	4
<i>Illegal Stop</i>	6
<i>Officer Failure to Appear</i>	3
<i>Unspecified Evidence Suppressed/Excluded</i>	3
Case Appealed	1
Transfer to District Court	1
Result of Plea Deal	1
Unknown Reason for Dismissal	24

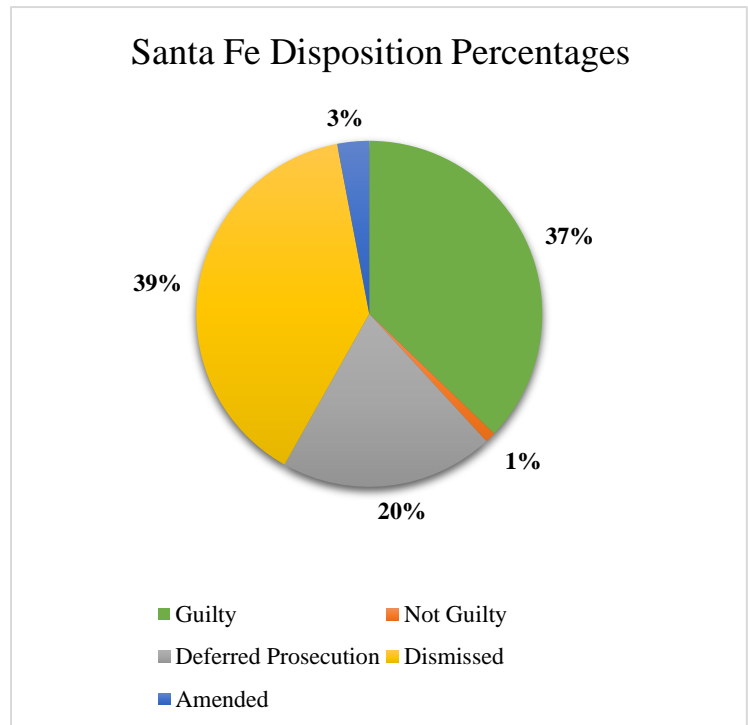
*Year Two data will reflect a lower number of unknown reasons for dismissal.

SANTA FE COUNTY July 2016-July 2017

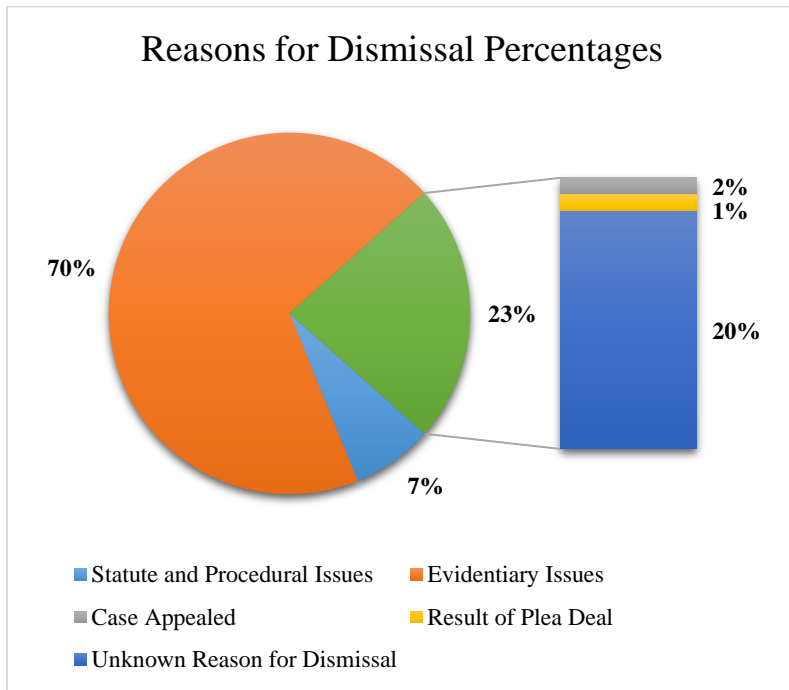
	-Actual	-Total %	-AOC %
Cases Monitored	245	-	-
Adjudicated	179	-	760
Guilty	66	37%	54%
Not Guilty	2	1%	1.5%
Deferred Prosecution	36	20%	-
Dismissed	69	39%	44.6%
Amended	6	3%	-



District Attorney Meeting Summary:
Please see District Attorney Summary notes in Rio Arriba County summary.



SANTA FE DISMISSAL ANALYSIS



Observation:

- Direct observation from the Court Monitor shows that the exclusion or suppression of evidence results in the dismissal of 55% of monitored cases. Further investigation into the current Discovery exchange processes may help determine which areas need attention and resources.

Reasons for Dismissal Detail	
Statute and Procedural Issues	5
<i>6-Month Rule</i>	5
Evidentiary Issues	24
<i>BAC Below .08</i>	1
<i>Insufficient Evidence from Officer</i>	2
<i>Missing Blood Test</i>	1
<i>No Probable Cause for Stop</i>	3
<i>Officer Failed to Appear</i>	2
<i>Officer No Longer Works with Department</i>	1
<i>Suppression/Exclusion of Non-Specified Evidence</i>	14
Suppression/Exclusion of Testimony	24
<i>Suppression/Exclusion of Unspecified Testimony</i>	16
<i>Suppression/Exclusion of Officer Testimony</i>	8
Case Appealed	1
Result of Plea Deal	1
Unknown Reason for Dismissal	14

KEY FINDINGS AND RECOMMENDATIONS:

This year one data will serve as a crucial benchmark as the Project progresses. Forming partnerships with local agencies will be fundamental in the application of data into productive and meaningful judicial improvements.

Through the examination of data from year one of the Court Monitoring Project and meetings with the District Attorney Offices applicable to the scope of this Project, the following are a compilation of state-wide recommendations, made by the various District Attorney Offices.

- **Assisting Prosecution by assigning each Assistant District Attorney with a paralegal to gather evidence and to stay abreast of all communications with Defense, particularly in following up with evidentiary Discovery requests.**
- **For those cases that are dismissed without prejudice with the intention of being refiled, developing support staff to ensure that refiled cases are done so in a timely fashion and are not overlooked.** Cases dismissed without prejudice often occur when Prosecution fails to prosecute within the time constraints. Along with paralegals, this could possibly mean reassigning the case to a new Assistant District Attorney in an effort to ensure prosecution of an otherwise dismissed case.
- **Increasing the staff in District Attorney Offices to ensure that there is State representation in Pre-Trial interviews of law enforcement and civilian witnesses.**
- **Maintaining the presence of a court monitor in courtrooms through MADD's Court Monitoring Project to continue the observation and documentation of cases in an effort to provide feedback on changes or make recommendations.**
- **Hosting cross-trainings with local law enforcement and District Attorney Offices to broaden the understanding of the challenges both entities encounter.** DWI specific prosecution training for law enforcement, specializing in the management of Discovery and court room strategy.
- **Facilitating the meeting of various District Attorney DWI departments to discuss obstacles and solutions relative to their districts.**
- **Developing a statewide DWI Prosecutor training for new Assistant District Attorneys where additional information can be disseminated on the management of obstacles specific to the DWI cases in which they will practice.**
- **Developing a statewide electronic database of prior DWI convictions for District Attorney Offices to use for all Jurisdictions in New Mexico.**

GLOSSARY

¹ Total percentages may not equal 100% due to rounding.

² If a case disposition is Guilty with a First Offender Track or Deferred Prosecution, the Defendant has the opportunity for their case to be dismissed in the court record if they complete the sanctions ordered by the Court. However, the charge will be classified in their MVD record as guilty and can be used as a prior DWI conviction if the Defendant were to get charged with a DWI in the future. AOC Deferred Prosecution dispositions were reported as Dismissed or Guilty depending on the probation outcome of the Defendant. This may account for the disparity between the AOC and Court Monitoring guilty and dismissed statistics.

³ Amended dispositions reflect cases in which the DWI charge was dismissed and amended to either a Careless Driving or Reckless Driving charge.

⁴ 10-Day Rule: Per the Case Management Order, the 10-Day Rule orders that the defendant be arraigned within (10) days on the indictment if not in custody and (7) days if in custody.

⁵ 45-Day Rule: Defense has (45) days after date of arraignment to make disclosure of discovery.

⁶ 6-Month Rule: A Criminal Trial shall be commenced within (182) days.

⁷ Officer Failure to Appear Due to FMLA, Training or Illness: Officer failure to appear due to Family Medical Leave Act, work sanctioned training or an illness.

⁸ Jurisdiction: District Attorneys can prosecute cases in state, city or county land. If a crime occurs outside of that jurisdiction, the District Attorney cannot prosecute the case.

APPENDIX

Court Monitoring Form:

Court Monitoring Quick Sheet p.1	
Information	
State _____	Case # _____
Court House _____	Date DUI issued _____
Court Monitor _____	Case start date _____
Present in court? _____	Case status open or closed? _____
Interpreter needed? _____	Case closed date _____
Interpreter present? _____	Arresting officer? _____
What language? _____	He/she present? _____
Judge _____	Prosecutor _____
Judge changed? _____	Prosecutor change? _____
Defendant _____	Defense attorney _____
Defendant Age _____	Defense attorney type? _____
Defendant Gender _____	Defense attorney change? _____
Defendant Race/ Ethnicity _____	

Court Monitoring
Quick Sheet p.2

Charge Information

Alcohol related? _____

Drug related? _____

BAC _____

Prescription drug related? _____

BAC obtained by _____

Child present in the car? _____

BAC ammended? _____

Classification of charge _____
(class "c" misdemeanor etc.)

If yes, new BAC _____

Previous DWI convictions? _____

Initial plea _____

Currently on probation or
parole? _____

Crash related? _____

Criminal charge _____
(felony or misdemeanor)

Property damage? _____

Personal injury? _____

Court Monitoring
Quick Sheet p.3

Sanctions & Sentence

Disposition _____
(guilty, not guilty,
deferred, etc.)

Did judge agree to plea? _____

If not, explain _____

If amended,
to what? _____

If amended to
lesser charge
what type? _____

Mistrial? Reasons? _____

Other disposition? _____

Dismissed or rescinded? _____

Reasons? _____

New case number? _____

Deferred prosecution? _____

Reasons? _____

If amended to
felony, what type? _____

Classification of
new charge if
changed _____

Another hearing scheduled? _____

Next hearing date _____

Minimum sentencing
guidelines met? _____

Court Monitoring
Quick Sheet p.4

Efficiency of Court

Could you hear the proceedings? _____

Was the hearing delayed? _____

No? Reasons? _____

Reason for delay _____

Other notes:

Types of Proceedings

Proceedings _____

Case # _____

If other, please describe _____

Date of Proceeding _____

Other Charges

Other Charges _____

Case # _____

Disposition of charges _____

If other, please describe _____

Date other charges dropped _____

Sanctions

Sanction _____

Amount _____

Licensing restriction _____

Time (hours) _____

Other sanctions not listed _____

Time (day) _____

Time (month) _____

Case # _____

Logged into data base? _____

Date logged? _____

By whom? _____