

# COURT MONITORING ANNUAL REPORT YEAR 1



**madd**<sup>®</sup>

South Carolina

## 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. Court Monitoring staff and volunteers collected specific information on cases stemming from 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 September 30<sup>th</sup>, 2016.

The 5<sup>th</sup> Judicial Circuit and 13<sup>th</sup> Judicial Circuit showed 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).

For the 13<sup>th</sup> Circuit, which is almost entirely Greenville County data, 48% of the 334 cases with a final determination ended with the accused being found guilty. Another 44% were pled down to reckless driving. For the 5<sup>th</sup> Circuit, 88% of the 94 cases with a final determination ended with the accused being found guilty. Another 12% were pled down to reckless driving.

While we cannot confidently attribute differences in the outcome of cases to these different approaches to prosecution, our data would suggest that officers achieve DUI convictions at a higher rate. However, one of the reasons we had substantially more Greenville County data is that 81% of those cases we monitored had a final determination, while this was the case in only 22% of Richland County cases and 38% of Kershaw County cases. In the latter two counties, it was highly common for the accused to request a jury trial, which extends the process and can cause complications with getting an eventual conviction.

MADD's 2017 Court Monitoring national report shows a combined conviction rate of 68% for the 11 states that had data.

There are 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. However, we appreciate that

officers seem to aggressively pursue DUI convictions and would like to see that valued by whoever prosecutes the case.

South Carolina makes the arrest investigation and prosecution of DUI cases far too difficult. The primary concern is our state's dash cam arrest video statute that sets a difficult standard and is considered a required piece of evidence, which is unlike other states based on all discussions we have had. It seems to be a consensus that the video statute is the primary cause of our high rate of plea deals to lesser charges (reckless driving).

There is a concerning lack of visibility of the handling of cases in certain courts we monitor, to the extent that we cannot monitor them as everything is worked out "in the back" and the final decisions are not even announced in open court.

MADD South Carolina has been continuing to monitor cases in these areas since October 2016 and will continue into 2018. 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.

- 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.
- Encourage more aggressive prosecution of DUI cases so that more are held accountable with the appropriate penalties and not plead down to reckless driving charges that do not keep the public as safe from repeat offenses.
- Move toward minimizing officers prosecuting their own cases in court. However, we would like to preserve the commitment officers have to getting DUI convictions, as our data suggest.
- Strengthen Emma's Law so that all convicted DUI offenders are put on the Ignition Interlock Program, the most effective available approach to reducing repeat offenses.
- Encourage all courts to allow public observation of the final determination of cases in court, as opposed to all agreements being submitted out of public view only.

## **Introduction**

Drunk driving is a serious crime. This message may get lost without consistent outcomes in the court system. The court system is tasked with determining an individual's guilt or innocence and with setting the boundaries of an offender's punishment, restitution and/or rehabilitation.

The problem of drinking and driving in South Carolina is well documented and supported by any number of negative statistics and rankings that put our state among the worst in the nation. According to the state's 2018 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 2011-2015 NHTSA data that show South Carolina's alcohol-impaired driving Vehicle Miles Traveled fatality rate to be .65 deaths per million miles travelled, much higher than the national average of .34. 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 301 drunk driving deaths in 2015 was 10<sup>th</sup> most in the nation, though South Carolina ranks 23<sup>rd</sup> in population.

## **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 the 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:

- 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, and the hope is to expand our efforts in future years.

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 and circuit 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. Volunteers report their volunteer hours to the Court Monitoring Specialist. Currently, MADD South Carolina only has one staff person in their Court Monitoring Program. The time given by volunteers is vital to the Court Monitoring Program.

*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 1, 2016 – September 30, 2016.** 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 from Year One at the time of preparing this report.

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 to go to court for an afternoon 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 simply 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/Dismitted" 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, almost always 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 *not 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 essentially 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.

### Key Expert Input

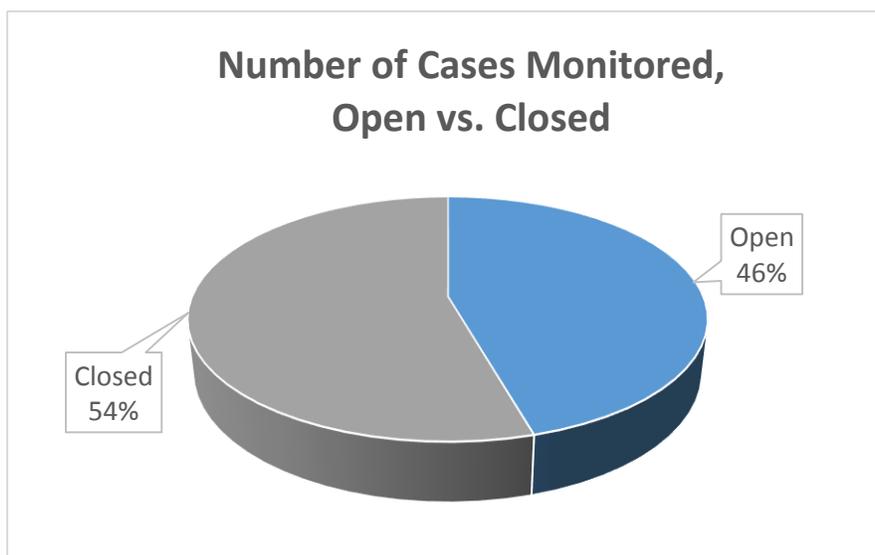
The data collected directly from monitored cases that we share in this report is compelling in many ways, but our data alone are not sufficient to fully grasp the landscape of DUI prosecution in these areas. In May 2017, MADD South Carolina convened a “stakeholder roundtable” in each of the two judicial 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. Because there were key individuals not able to attend, we held several one-on-one 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 monitored 832 total cases, of which 453 cases had a final determination and 379 cases remain open. These open cases will continue to be monitored, and the outcome of those cases will be included in the Year Two report if they have a final disposition by the time of that report.

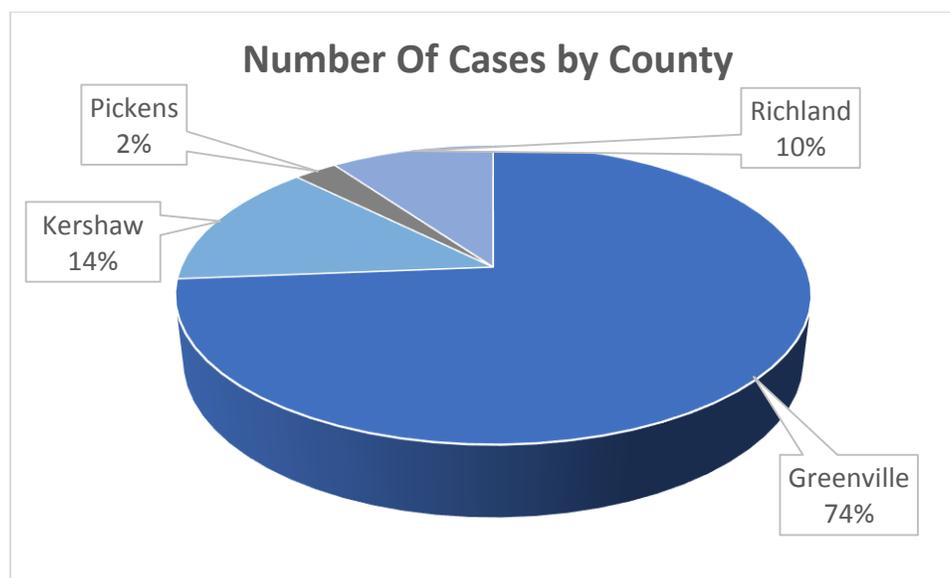
The primary reason for a case still being open is that the defendant requested a jury trial and that was set for a future date.



### Closed/Open Cases By County

COUNTY	# OF CASES CLOSED	# OF CASES OPEN	% OF CASES CLOSED
GREENVILLE	334	77	81%
KERSHAW	69	111	38%
PICKENS	12	12	50%
RICHLAND	47	212	22%

As can be seen in the table above, there were major variations in the percentage of cases that had a final determination across the counties. More than four in five cases had a final determination in Greenville County compared to roughly one in five for Richland County. The implications of this are that our final data on case dispositions contain far more Greenville County data (74% of cases as shown in the chart below) than any other county. For this reason, we do not present any data combined for the four counties, as it would be heavily slanted toward reflecting the outcome of Greenville County cases.



### Type of Prosecutors and Defense Representation

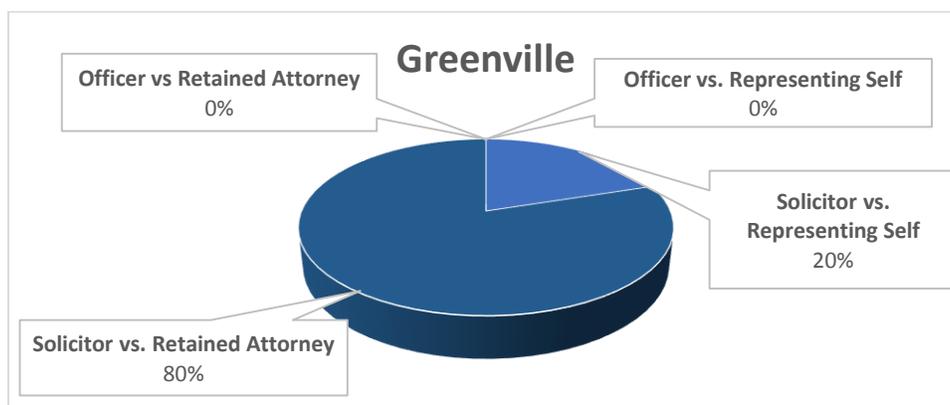
Some cases we monitored were prosecuted by an attorney from the Solicitor's office. Some were prosecuted by the arresting officer. The latter is an unusual practice from a

national perspective. Informed experts in our state indicate that we are either the only state that allows this, or perhaps just one of two states.

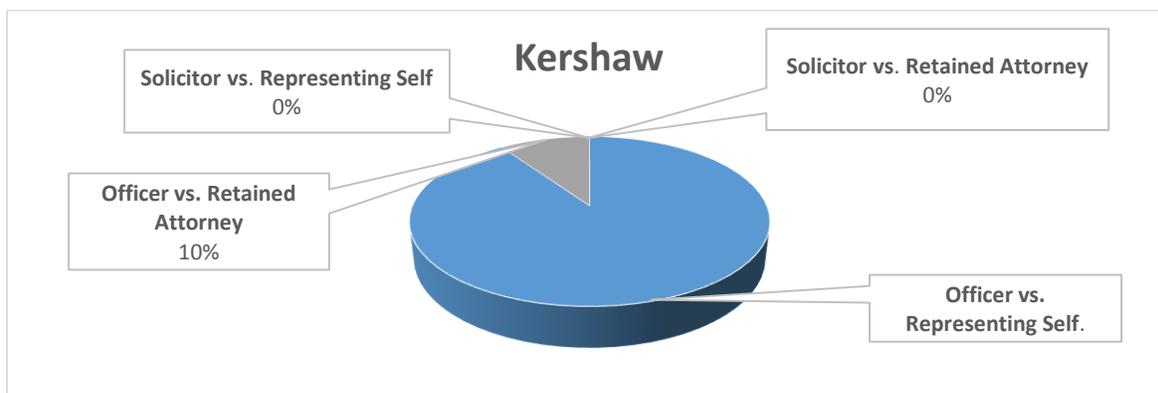
We also created two categories to describe the representation of the accused. “Retained attorney” means the accused had a paid attorney or a public defender. The other category is for those who handled their own case without any attorney.

Below we present the percentage of cases that fall under each of the combinations of those two categories.

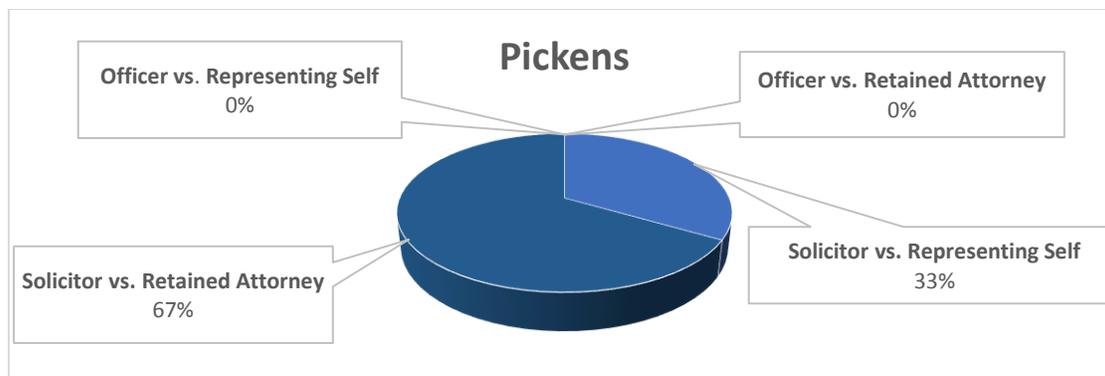
In Greenville County, we monitored 267 cases that involved a solicitor against a retained attorney. 67 cases involved a solicitor against the accused representing themselves.



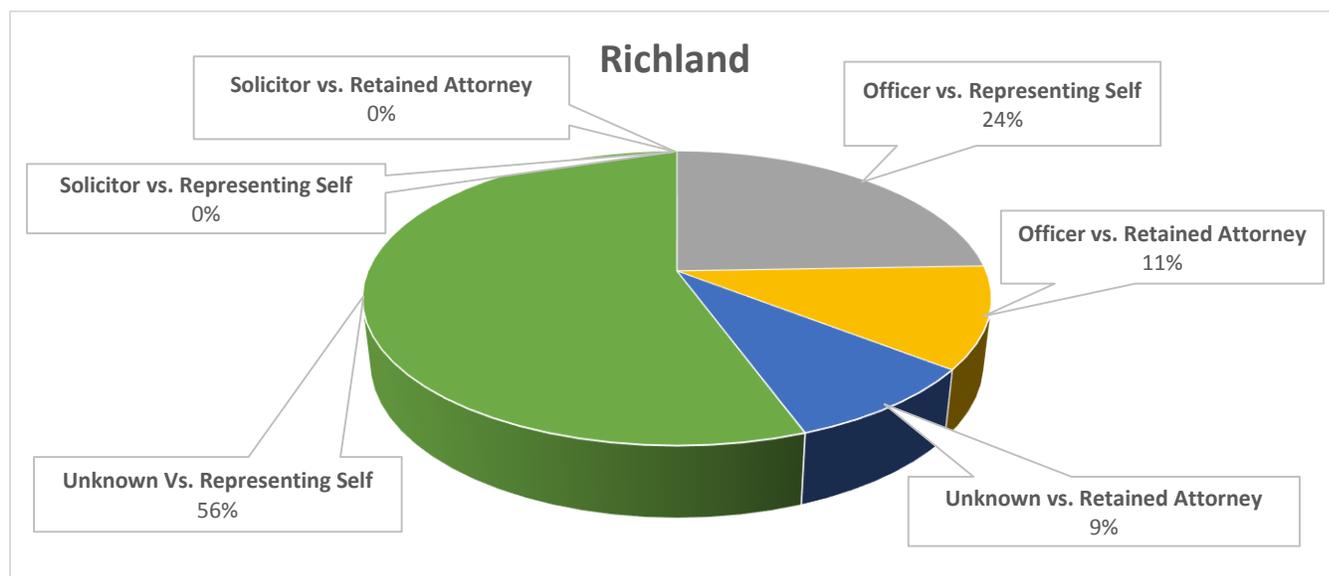
Kershaw County had 56 cases that involved an officer against the accused representing themselves. Six cases involved an officer against a retained attorney.



Pickens County had eight cases that involved a solicitor against a retained attorney. Four cases involved a solicitor against the accused representing themselves.



In Richland County, the online court records do not allow us to determine whether a solicitor or an officer prosecuted a case if we were not able to monitor the case in person. Therefore, some cases are labeled as “unknown.” Richland County had 11 cases that involved an officer vs. the accused, five cases that involved an officer vs. a retained attorney, four cases involving unknown prosecutor type vs. retained attorney, and 25 cases involving unknown prosecutor type vs. the accused.



In summary, we see substantial differences between the 13<sup>th</sup> Circuit and the 5<sup>th</sup> Circuit in terms of who prosecutes the cases. All cases we monitored in the 13<sup>th</sup> Circuit were handled by a representative of the Solicitor’s office. No cases 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.

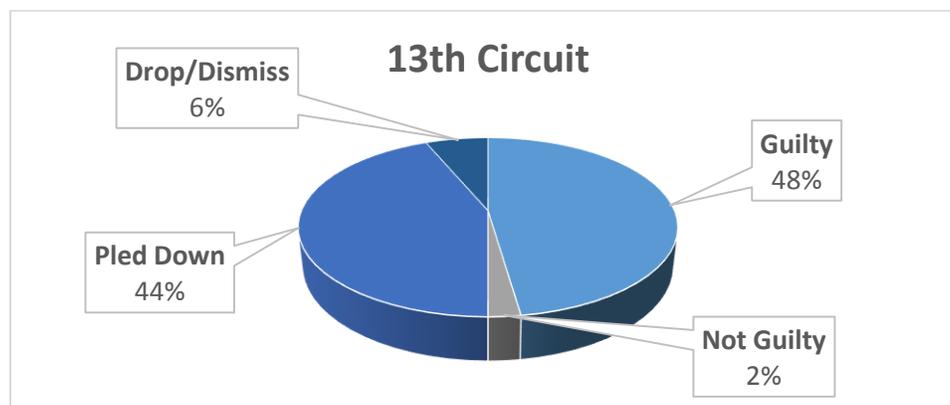
Conversations with prosecutor and officer experts confirmed that there is a direct connection between who prosecutes the cases and the percentage of open/closed cases we presented earlier. When solicitors prosecute the case, they are more likely to bring the case to a final determination at the first 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.
- Solicitors may be more amenable to accepting plea deals to lesser charges than officers. We explore this concept further later in the report.

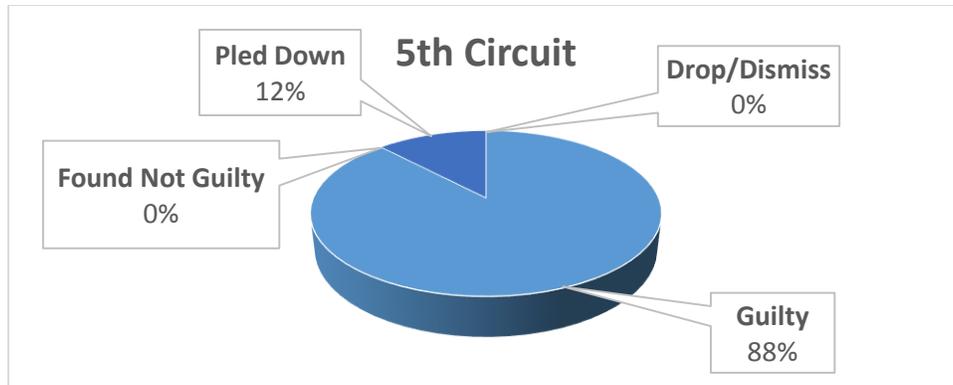
### **Case Dispositions by Area**

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.

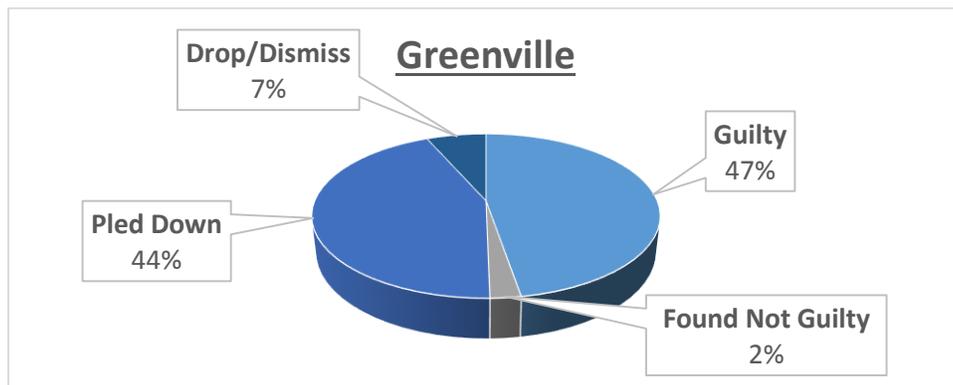
In the 13<sup>th</sup> Judicial Circuit, which is primarily Greenville County data because we had few Pickens County cases monitored, 165 cases ended with the person found guilty, eight were found not guilty, 151 cases were pled down, and 22 were dropped/dropped/dismissed.



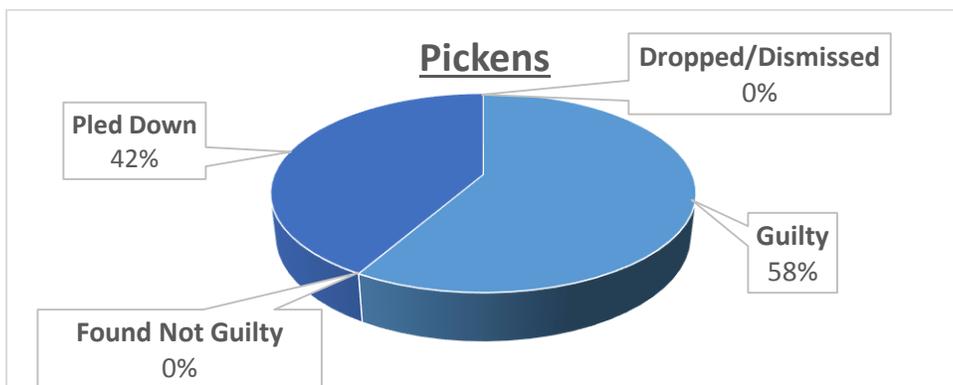
The 5<sup>th</sup> Judicial Circuit had 94 cases where the accused was found guilty, zero found not guilty, 13 were pled down, and zero were dropped/dropped/dismissed.



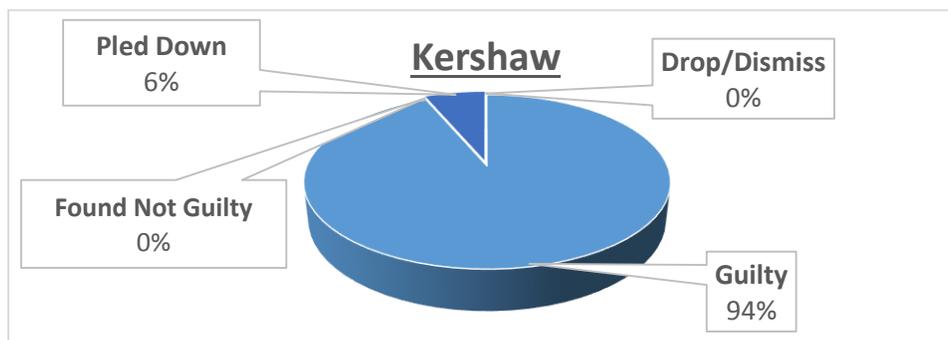
Dispositions for Greenville County were 158 cases where the accused was found guilty, eight were found not guilty, 146 were pled down, and 22 cases were dropped/dismissed.



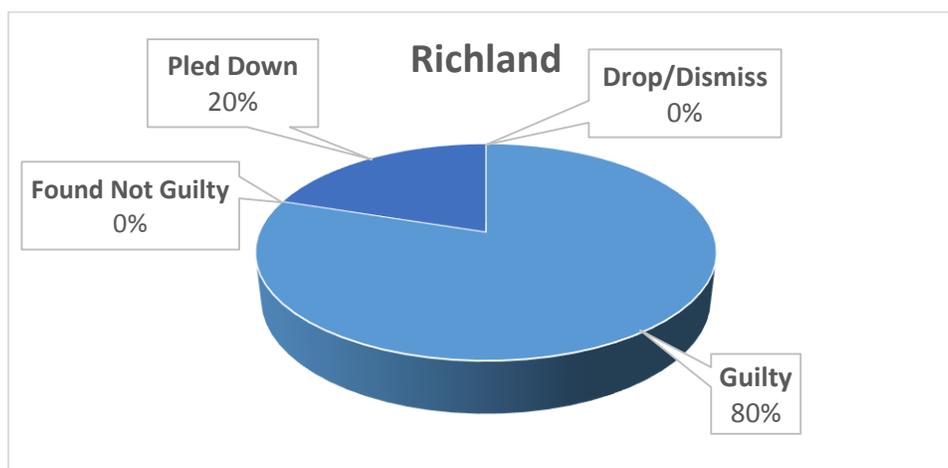
Dispositions for Pickens County were seven cases where the accused was found guilty, five were pled down, zero were found not guilty, and zero were dropped/dismissed.



Dispositions in Kershaw County were 58 cases where the accused was found guilty, zero were found not guilty, four were pled down, and zero were dropped/ dismissed.



Dispositions in Richland County were 36 where the accused was found guilty, zero were found not guilty, nine were pled down, and zero were dropped/dismisssed.



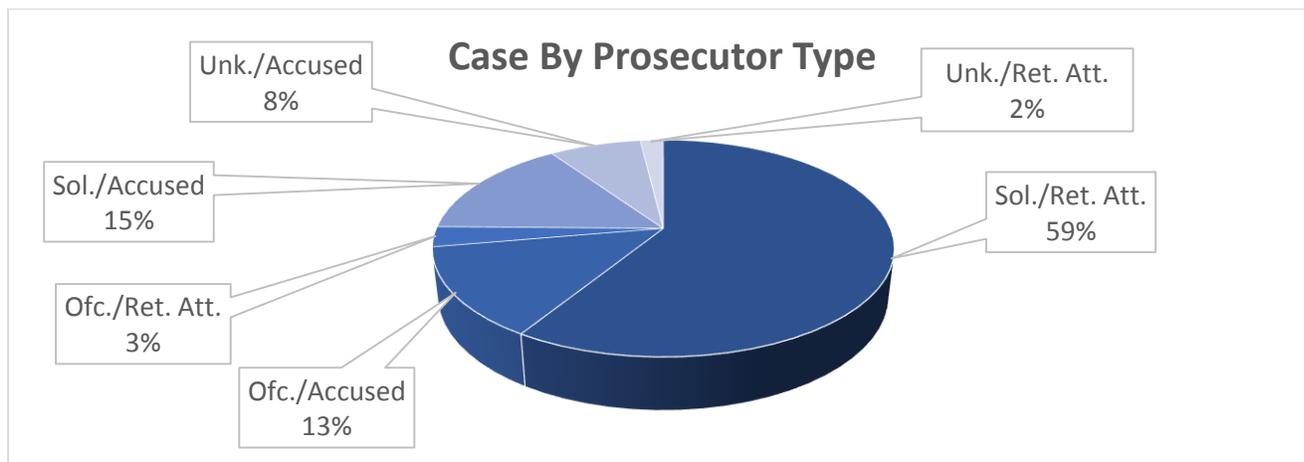
### **Case Disposition by Prosecutor Type**

Below, we share data on the results of cases that had a final outcome based on the type of prosecutor (solicitor 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. Conversely, all officer-prosecuted cases were from the 5<sup>th</sup> Judicial Circuit.

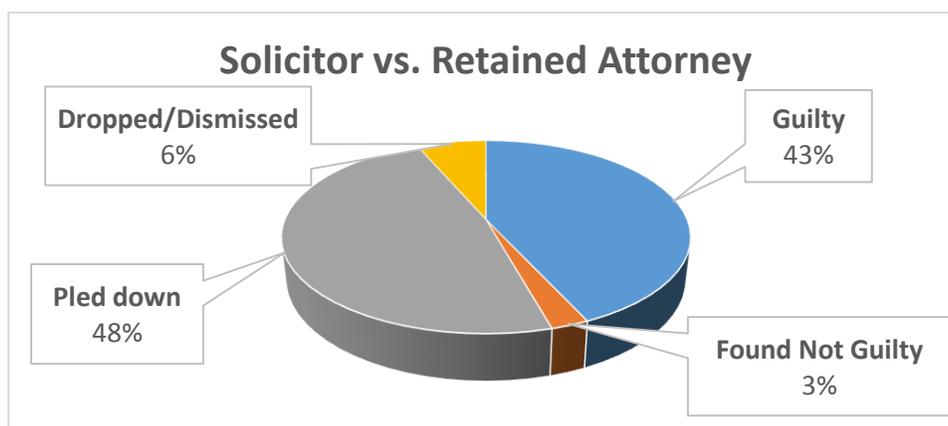
Across all of our monitored cases, it was a solicitor against a retained attorney in 276 cases, officer against the accused representing themselves in 63 cases, officer against a retained attorney in 14 cases, solicitor against the accused representing themselves

in 71 cases, unknown prosecutor type against the accused representing themselves in 36 cases, and unknown prosecutor type against a retained attorney in nine cases.

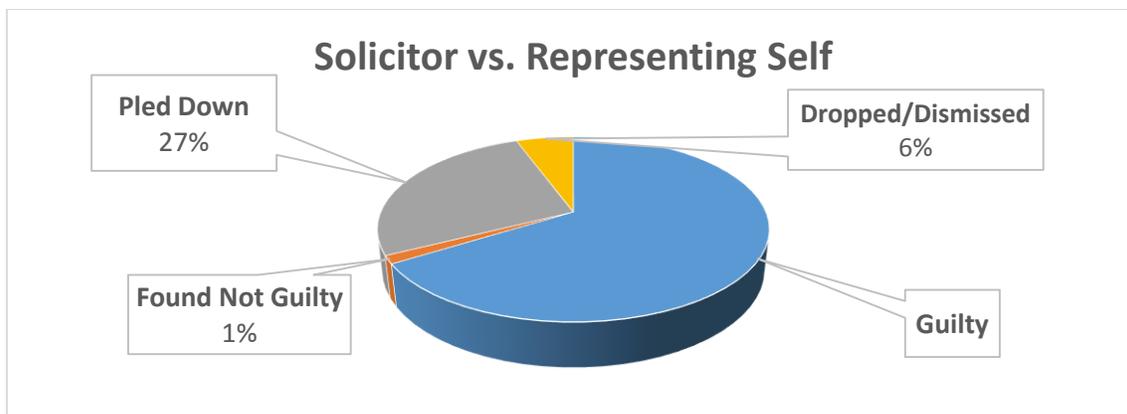
Because the 13<sup>th</sup> Judicial Circuit had a much higher rate of their cases coming to a final disposition and that circuit prosecutes with solicitors, we have more data on solicitor-prosecuted cases than the other categories.



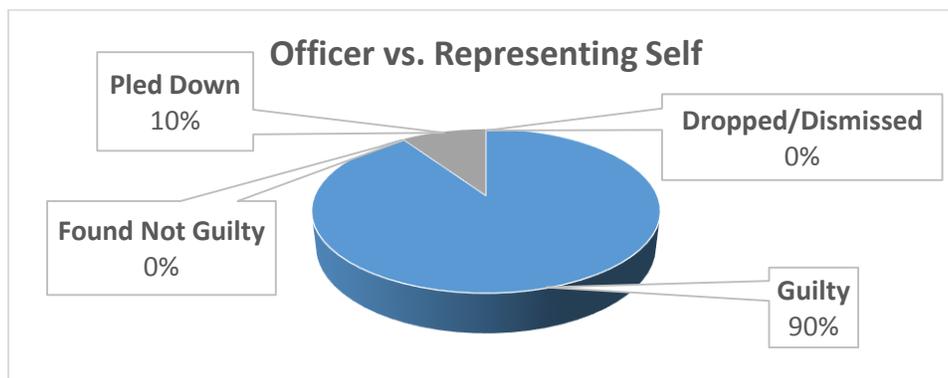
Dispositions involving a solicitor against a retained attorney were 119 found guilty, seven found not guilty, 132 pled down, and 18 dropped/dismisssed—a 43% conviction rate.



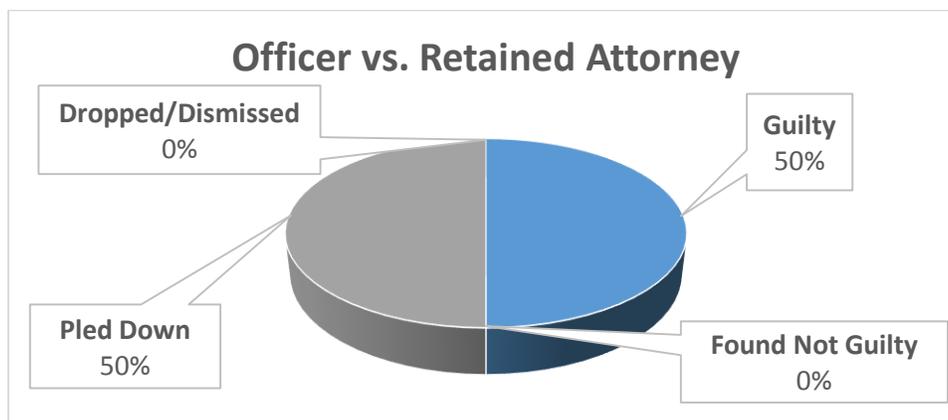
Dispositions involving a solicitor against the accused representing themselves were 47 found guilty, one found not guilty, 19 pled down, and four dropped/dismisssed—a 66% conviction rate.



Dispositions involving an officer against the accused representing themselves were 82 found guilty, zero found not guilty, six pled down and zero dropped/dismissed—a 90% conviction rate.



Dispositions involving an officer against a retained attorney were seven guilty, zero found not guilty, seven pled down and zero dropped/dismissed—a 50% conviction rate, though it should be noted this is based on few 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.

*Discussion.* The differences in the conviction and plea down rates between the two judicial circuits are substantial with the 13<sup>th</sup> having a much lower conviction rate and a higher plea down rate, which are related as the two primary outcomes of the cases we monitored.

To give a national comparison, cumulative data from 11 MADD states doing court monitoring showed a 68% conviction rate, which would be higher than our combined state conviction rate.

Many of the informed experts we shared the initial findings with were surprised to see that the area that prosecutes their cases with solicitors had a lower conviction rate than the area where the cases were mostly prosecuted by the arresting officer. After seeing these data, many of these experts believe there was a direct connection between the type of prosecutor and the conviction rate with the prevailing theory being that officers had high conviction rates because they were on the scene and had incentive to reach a verdict that matched their determination at the time of their arrest. Put another way, if they believe the person was impaired, they do not want to see the person end up with a lesser charge like reckless driving. The other side of that prevailing theory was that an attorney prosecuting the case may be less invested in each individual case or that prosecuting attorneys are more accustomed to working out deals with the defense on a number of types of charges, DUI included.

However, other factors could be at play. Greenville County could be an area where judges/magistrates have been less favorable to DUI convictions, forcing solicitors to plea down charges rather than have no conviction at all. It is also possible that Greenville County's conviction rate may look low compared to the 5<sup>th</sup> Judicial Circuit, but perhaps could be higher than other parts of the state where we are not doing court monitoring. Officers and prosecutors from other parts of the state have certain indicated to MADD staff that they think their conviction rate may be well below 50%.

*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 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 gets mentioned in open court. Our court monitor will only hear (or see online) that a plea deal was arranged, 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 upon, 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. 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. 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.
4. Judges/Magistrates Not Favorable to DUI Convictions. 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.
5. Officer Error. 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.
6. 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.
7. 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.

8. Keeping Fines Local. One of the experts we spoke with indicated that she hears reports that there is incentive to move to reckless driving charges because those fines will stay local.

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 Officers Prosecuting DUI Cases.* 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 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.

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.

MADD agrees that the ideal prosecutor is an attorney with experience in DUI cases that understands the impact of aggressive prosecution of DUI on public safety. However, having attorneys as prosecutors is less advantageous if they are apt to plea cases to lesser charges in cases when perhaps a DUI conviction is possible. Our data certainly suggest a difference in the willingness to plea between attorney prosecutors and office prosecutors.

Therefore, our suggestion would be for the state to strongly pursue support 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 plea down rates in some areas. 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.

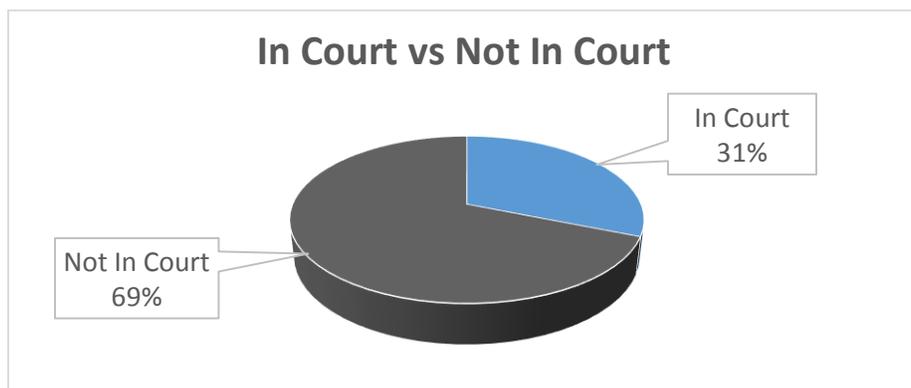
### **Case Dispositions by Court Monitor in Court vs. Not in Court**

When possible, MADD prefers to monitor DUI cases with a staff person or volunteer in the courtroom. However, logistics sometimes prevent this from being possible for all cases we want to monitor. In addition, we came to find that in-person court monitoring is not possible in some courts for a majority of DUI cases that are handled on the day of their first hearing. This is because many cases are entirely handled in the hallways and meeting rooms of the courthouse that are not accessible to the public.

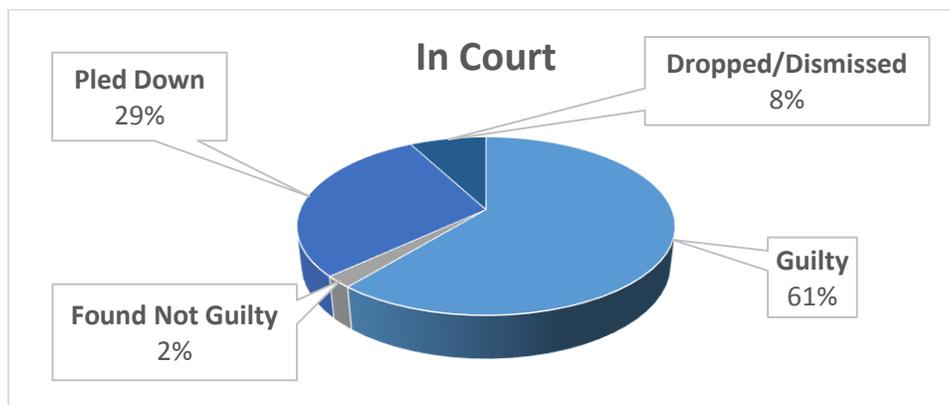
To be specific, on a Monday, the court may have a roster of cases including DUIs. The defendants, their representation, and prosecutor (attorney or officer) meet somewhere in the courthouse and work out what will happen with that case. That could be a guilty plea, a plea to a lesser charge, or a request for a jury trial. Those parties report the outcomes to the judge/magistrate in his or her chambers or office, but there is no “court” in the sense that the public thinks of it. The judge/magistrate does not take the bench and cases are not called with the outcome of each announced. MADD could be in the courthouse and not have an opportunity to know the outcome of a single case. We only know of the final determination of the case by looking at online court records.

At MADD South Carolina, we disagree with this practice, not solely because it prevents us from in-person court monitoring, but because it takes some of the visibility and public accountability out of the judicial process. In many discussions we have had on this topic, the general consensus of others has been this is an unhealthy practice as the opportunity for public observation is a positive check on the judicial process. However, we are in no way suggesting that this practice is illegal or that it suggests unethical actions are being done outside of the public eye.

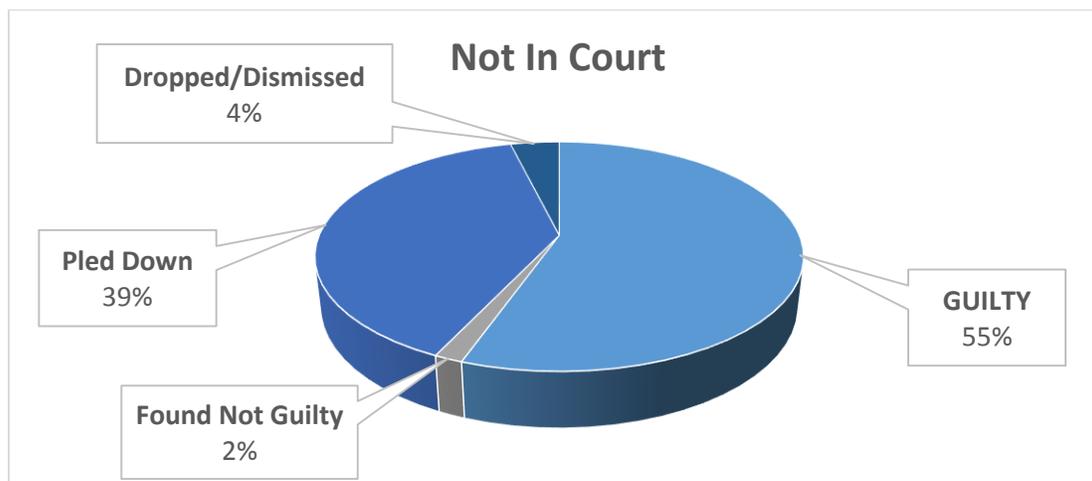
When it does not work out to monitor a case in person for any reason, MADD can still often monitor the case online. In Year One, a court monitor was in court for 141 DUI cases. The court monitor was not in court for 312 cases.



The final case outcomes when the court monitor was in court were 86 cases ended with the person found guilty, three were found not guilty, 41 cases were pled down, and 11 were dropped/dismissed.



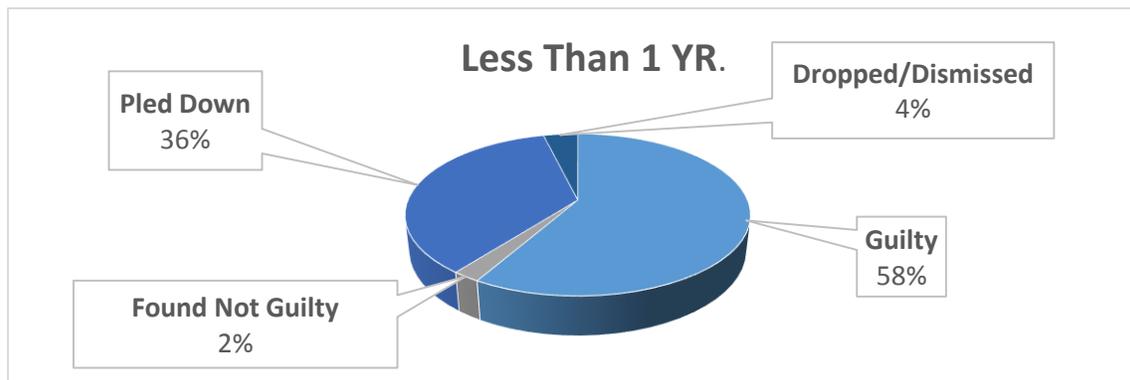
The final case outcomes when the court monitor was not in court were 173 cases ended with the person found guilty, five were found not guilty, 122 cases were pled down, and 12 were dropped/dismissed.



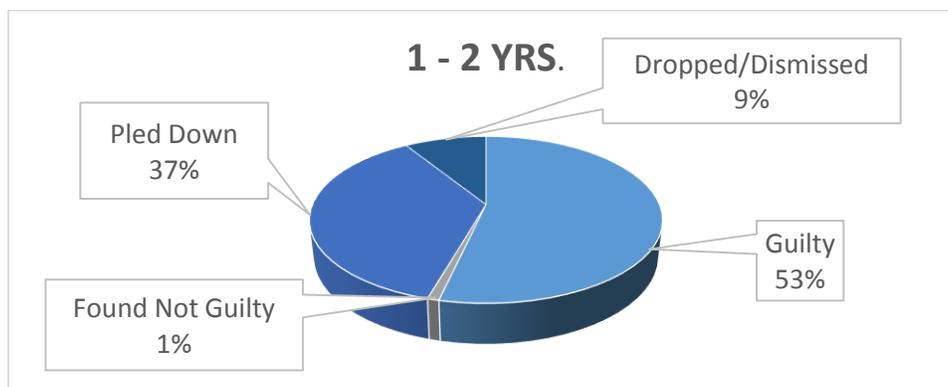
While these data show a higher conviction rate and lower rate of cases being pled down to lower charges, it cannot necessarily be concluded that this is due to a court monitor being present. However, this is an aspect of the data we will continue to monitor in future years, especially as our court monitors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

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

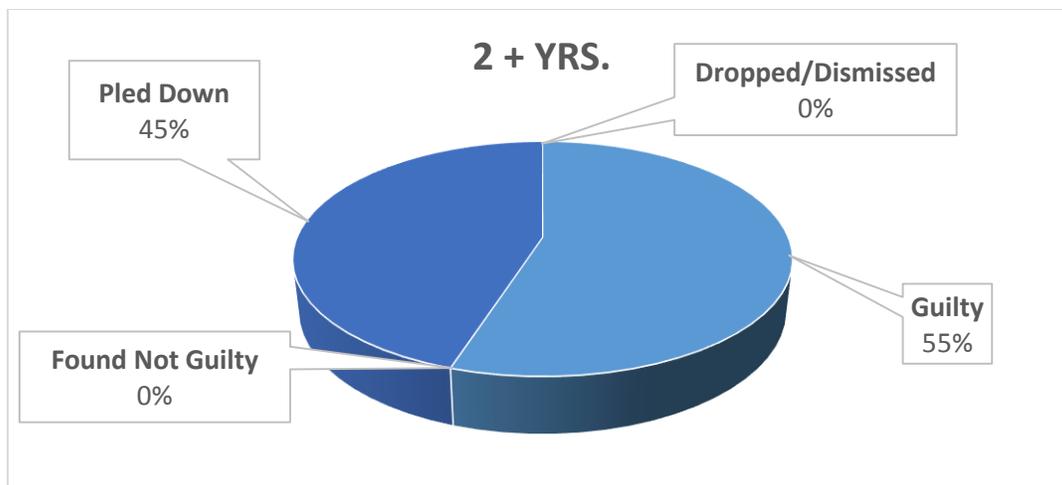
Part of our data collection is to record the length of time between the arrest and the final determination of the case outcome. Dispositions for cases less than one year old were 183 cases where the person was found guilty, seven were found not guilty, 112 cases were pled down, and 12 were dropped/dismised.



Dispositions for cases between one and two years old were 60 cases where the person was found guilty, one was found not guilty, 41 cases were pled down, and 10 were dropped/dismised.



Dispositions for cases two or more years old were 11 cases where the person was found guilty, zero were found not guilty, nine cases were pled down and none were dropped/dismised.



The five percentage point difference in conviction rates between cases that took less than one year and cases that took between one and two years suggest that the challenges we hear about in getting convictions for older cases, described earlier in the report, are confirmed by our data.

### **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 below 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:**

<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), or any other law of this or another State that prohibits a person from driving under the influence.	<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>	
<b>Refusals and BACs below 0.10%</b>	<b>BACs from 0.10% Through 0.15%</b>	<b>BACs of 0.16% and above</b>	
<b>Mandatory minimum:</b> 5 days in jail and \$2,100 fine (May suspend fine to \$1,100)	<b>Mandatory minimum:</b> 90 days in jail and \$5,000 (May suspend fine to \$1,100)	<b>Mandatory minimum:</b> 90 days in jail and \$3,500 (May suspend fine to \$1,100)	
<b>Max</b> 1 year and \$5,100 fine	<b>Max</b> 2 year and \$5,500 fine	<b>Max</b> 3 years and \$6,500 fine	

**THIRD OFFENSE:**

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

**FOURTH OFFENSE:**

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

§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 monitored were first offenses. After reviewing the sanctions data, most of the fines we saw fell somewhere between \$400 and \$1300. 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 only seen in six cases, a small percentage given we looked at more than 200 convictions. 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.

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 first offense DUI cases, but only if the BAC is .15 or higher.

Our Court Monitoring Specialist reports 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 we have identified that we may not have been looking in all the right places in the time we collected this Year One data.

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:

- The 5<sup>th</sup> Judicial Circuit and 13<sup>th</sup> Judicial Circuit show very different approaches to DUI prosecution in regard to whether solicitors are assigned to cases as prosecutors or officers prosecute their own cases.

- While we cannot confidently attribute differences in the outcome of cases to these different approaches to prosecution, our data would suggest that officers achieve DUI convictions at a higher rate, though a very high percentage of cases they prosecuted have yet to be determined because of the accused requesting jury trials. This is problematic as delays can often harm the prosecution.
- There are 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. It is not done in other states. However, we do appreciate that officers seem to aggressively pursue DUI convictions and would like to see that valued by whoever prosecutes the case.
- South Carolina makes the arrest investigation and prosecution of DUI cases far too difficult. The primary concern is our state's dash cam arrest video statute that sets a difficult standard and is considered a required piece of evidence, which is unlike other states based on all discussions we have had. It seems to be a consensus that the video tape statute is the primary cause of our high rate of plea deals to lesser charges (reckless driving). National MADD Court Monitoring data suggests that South Carolina has a lower conviction rate than the national average.
- There is a concerning lack of visibility of the handling of cases in certain courts we monitor, to the extent that we cannot monitor them as everything is worked out "in the back" and the final decisions are not even announced in open court.

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.

**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.

**Prosecutors:** Prosecuting a DUI is also 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 judge/magistrate 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.

**Judges/Magistrates:** In many ways, judges and magistrates are not a major focus of our data because so few cases are actually having a determination made by a judge or jury. Most cases have a guilty plea or are plead down. However, 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. Drunk driving should be handled as the serious crime that it is.

**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 1) 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 2) change 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. Both issues have been raised to the legislature in the past and have had some level of interest. It is time to act.

The early data also suggest that perhaps MADD's presence in the courtroom has an impact on conviction rates. The conviction rate was six percentage points higher when a monitor was present.

## **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:

- Are any of our findings changed as we review a larger number of cases over time?
- Does the conviction rate in the 5<sup>th</sup> Judicial Circuit get lower as we learn the final determination for the many cases that had a jury trial requested?
- 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 hold or increase that conviction rates are higher when MADD court monitors are present?
- Is it feasible to expand the number of courtrooms (add jurisdictions) in the target counties where we monitor yet still use our time and resources efficiently?
- Can we better determine whether a solicitor is involved the 5<sup>th</sup> Judicial Circuit cases we monitor online?
- Can we better track the frequency of Ignition Interlock Devices and ADSAP as sanctions?
- Can we better track the level of BAC that the person is 1) initially being charged with and 2) found guilty of? As seen above, sanctions vary by categories of BAC, but our Year One data was 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?

MADD also continues to seek additional funding to expand court monitoring to different areas. Findings from additional areas may show very different outcome rates and potentially entirely different sets of circumstances, just as these two target areas have shown to be very different. Many of the key experts we spoke with estimated about a 50/50 split of DUI convictions vs. pleas down to lesser charges on a statewide basis.

Officials in some parts of the state have speculated their conviction rate might be substantially lower.

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