



From The ABA and The National Highway Traffic Safety Administration

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## California Brings DUI Courts to Schools

By Judge Karl Grube, Judicial Outreach Liaison  
(Florida)

The Judicial Council of California, in cooperation with the California Administrative Office of the Courts, began the new year with a faculty development training program designed to bring DUI Courts to schools to educate students about impaired driving. The purpose of the program is to develop working groups of judges, educators, prosecutors, and defense attorneys, community leaders, and resource persons to carry out youth-oriented traffic safety outreach programs in their communities.

The training program presented a number of outreach programs including those based on the "Courage to Live" model first developed at the National Judicial College. Among the programs reviewed were those in which actual DUI cases are brought to schools for trial or for sentencing purposes. Students see firsthand the consequences and impact of impaired driving on actual defendants from the perspective of California's judicial system.

Not all outreach programs that were demonstrated involved actual DUI cases. Mock trials and mock crashes using the

"Every 15 Minutes" concept and video presentations designed for different age groups spurred discussion about the consequences of impaired driving and risk taking. Judges and their working groups were urged to evaluate the suitability of these different programs for use in school outreach programs in their communities.

The faculty training program components included an overview of the ethical constraints on judicial involvement in outreach programs, particularly those involving live defendants and actual cases. The working groups learned about judicial prohibitions against commenting on pending or impending cases, and how judicial involvement must be circumscribed when dealing with "real" cases. The program also provided education about cultural considerations when teaching teens and how to use successful developmental and cognitive approaches when teaching young people.

At the core of the training program is the process of familiarizing participants with the DUI Court in Schools training manual developed in conjunction with the University of Michigan. The participants were also introduced to the evaluation process that is a component of the project. During the second day of training, a substantial amount of time was devoted to the development of action plans. After the process of developing an

action plan was explained, the individual working groups met to develop their initial plans. At the conclusion, each group reported the components of its plan and the timetable for carrying the plan to fruition.

California's initiative to bring the reality of the consequences of impaired driving to young people is the largest undertaking of its kind in the U.S. The goal is to reduce motor vehicle crashes, which are the number one cause of death and needless suffering for children beginning at age four, through their teen years, and into early adulthood. Further information about the California DUI Court in Schools Project may be obtained from Michael Roosevelt, Senior Court Services Analyst, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102-3688 Phone: (415) 865-7820, e-mail: michael.roosevelt@jud.ca.gov.

NOTE: When used as a component of a comprehensive approach to underage drinking, which includes known evidence-based efforts, programs such as "Every 15 Minutes" can potentially enhance the program by intensifying the public awareness. Strategies that are known to show evidence in changing behavior include compliance checks, keg registration, party patrols, checkpoints, and saturation patrols. There are also some long term evidence-based efforts that require more time and monetary investment, such as Project Northland, which have proved to be effective and are on the Substance Abuse & Mental Health Services Administration (SAMHSA) National Registry of Evidence-Based Programs and Practices.

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# Ensuring Quality Impaired Driving Programs: Florida's Approach

By Judge Karl Grube, Judicial Outreach Liaison (Florida)

How do you ensure a quality DUI Education and Clinical Assessment Program? Florida believes it takes a team approach: a team of judges, therapists, attorneys, and state licensing officials. To ensure that all licensed Florida DUI programs comply with legal and regulatory standards, the Florida DUI Programs Review Board conducts a systematic review of each of the 26 certified DUI programs at least every 18 to 24 months. The unannounced site visit reviews are conducted by a team comprised of two members of the Review

Board and one member of the Department of Highway Safety and Motor Vehicles.

Each site visit assessment team is selected from members of a Review Board comprised of six county judges, five circuit judges, five therapists, two attorneys, and one financial counselor. Board members are appointed and receive no compensation other than per diem and travel expenses.

## It Takes a Team to Ensure Compliance

During a site visit, standard procedure is to meet with program management, clinical supervisors, instructors, treatment agencies, the local office of the Department of Highway Safety, probation officers, and local judges. Board members observe clinical evaluations and Level I and II educational programs. Client files are reviewed for compliance and financial records are audited. The objective is to evaluate working relationships and compliance with regulations, and to resolve any problems. All components, including

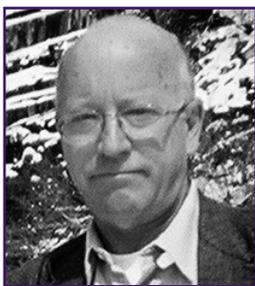
financial and corporate structure compliance, must adhere to Florida administrative regulations; otherwise, the program will not continue to be licensed to operate. The Program and the Chief Judge in that jurisdiction receive a written report delineating deficiencies and the remedies required to correct them. Programs are required to respond in writing to document correction of deficiencies within thirty days after receipt of the report.

Florida's approach to ensuring quality DUI education, client assessment, and treatment delivery is unique. It is a team approach that has been developed to provide the highest quality service, not only to the State's judiciary, but to the public and those defendants whose futures literally depend on quality DUI education and assessment programs.

# James Zion Named Tribal Judicial Outreach Liaison

By Brian Chodrow, Enforcement Justice Services Division, NHTSA

NHTSA's Office of Traffic Injury Control is pleased to announce that James W. Zion of Albuquerque, New Mexico, has joined NHTSA as the first Tribal Judicial Outreach Liaison (TJOL), and will work with NHTSA's Region VI office in Ft. Worth, Texas.



James W. Zion is a 1969 graduate of the Columbus School of Law, Catholic University of America. He has practiced law in the states of Connecticut and Montana, and on the Navajo and Hopi Reservations. He was formerly the general counsel of the National American Indian Court Judges Association and Solicitor to the Courts of the Navajo Nation. He is an adjunct professor in

the Department of Criminology and Criminal Justice of Northern Arizona, and a member of the faculty of the Tribal Judicial Center of the National Judicial College. He has also taught courses for the National Indian Justice Center and the Tribal Law and Policy Institute.

Zion has served as a court lawyer, establishing judicial programs, training judges and staff, and writing court rules. He has also served as an adjudicator, serving as a court commissioner hearing domestic abuse cases in the Crownpoint (Navajo Nation) Family Court. Zion is a noted author who has focused on traditional Indian law, Navajo peacemaking, and the rights of

indigenous peoples in international law. He lives in Albuquerque, New Mexico, and he practices in the courts of the Navajo Nation and the Hopi Tribe.

The TJOL will use the foundation built by the Judicial Fellowship/Judicial Outreach Liaison program, a joint venture of the American Bar Association Judicial Division and NHTSA. He will reach out to and educate communities in the Indian nations on traffic safety issues, serving as a consultant and liaison for the tribes, NHTSA, the NHTSA Regional offices, State Highway Safety Offices, and the Bureau of Indian Affairs. By connecting officials within the Indian community to networking opportunities and resources available to them, the TJOL will be an invaluable resource in expanding knowledge about combating impaired driving.

## UPCOMING NHTSA EVENTS



Click It Or Ticket

May 12 – June 1, 2008

Drunk Driving.

Over the Limit. Under Arrest.

August 13 –

September 1, 2008



Drunk Driving.

Over the Limit. Under Arrest.

December 13 – December 31, 2008

# Reflections Of A Disappointed Victim Witness

By Judge Karl Grube, Judicial Outreach Liaison (Florida)

This "reflection" was provided to me by a frustrated victim witness who reluctantly allowed me to recount his experience in traffic court:

In response to a subpoena, I was summoned to traffic court as a result of an accident in which my vehicle was struck from behind. The investigating officer did not witness the accident, but based upon my account of the events and that of another eyewitness, the defendant was issued a citation for failure to control vehicle speed in order to avoid an accident.

On the day of trial I appeared, as did the defendant. The officer did not appear. Although the courtroom was small, acoustics were poor and the sound system was marginal. Things moved quickly and when the case was called, the absent officer, of course, failed to come forward. I did not hear my name called but ultimately I became aware that the defendant's charges were dismissed.

I'm not sure why the defendant's case was dismissed; it just was, and I did not feel comfortable asking the judge for an explanation. Had I not recounted this experience to a judge, I would not have considered speaking out about my disappointing experience. Going to court is not a common occurrence for me. I would like to have known more about what was about to happen, what was happening, and what did happen in the end. Maybe when I retire I'll take up court watching.

The purpose of this article is not to criticize a particular state's traffic court system or any of its judges. In fact, I have deliberately removed all references to the state and county in question. The purpose is to focus on the overall public perception of judges and the court system. The experience of this victim witness will hopefully prompt those of us presiding over high volume traffic courts to become aware of the image we project to those whom we are elected or appointed to serve.

- ✓ Do we make opening statements that explain the impending courtroom experience and the procedures that will be followed by the court in calling and disposing of cases? Can everyone hear us?
- ✓ Do we routinely dismiss crash-related cases when the citing officer fails to appear even though independent witnesses are present? If so, why?
- ✓ Do we take the time to explain our dispositions, not only to the defendants but for the benefit of the witnesses who have been subpoenaed to testify?
- ✓ Some judges use forms that list the elements of various offenses and use them as a means for explaining their dispositions. If the disposition results in a finding of "not guilty," the form is given to the citing officer; if the disposition results in a conviction, the form is given to the defendant. Should blank copies of those forms be available to members of the public?

# In-House Drug Court Screening Lab Passes the Test

By Judge Kent Lawrence, Judicial Fellow (Georgia) & Adrienne Bowen, Drug Court Coordinator (Georgia)

In February 2001, the Athens-Clarke County, Georgia, DUI/Drug Court program was launched to confront substance abuse issues underlying the repetitive pattern of offenders driving while impaired and/or under the influence of alcohol and other drugs. Initial program funding sources included grant awards from the Criminal Justice Coordinating Council (CJCC), the Department of Justice (DOJ), and state allocated funds. Additionally, participant program fees, combined with Drug and Alcohol Treatment Education (DATE) funds and corporate sponsor monetary gifts donated to a 501(c)(3) non-profit treatment facility, provided sufficient funds for the drug court program to be "self-supporting." However, program sustainability is a continuing issue with existing programs as they grow in participant population and expand program services.



The next steps necessary for the continued growth and success of the Athens-Clarke County impaired driving court program were to improve participant accountability, increase program efficiency, and provide an additional funding resource to insure continued program sustainability. An in-house drug court testing laboratory was determined to be the best solution to improve the overall efficiency of the local drug court program.

In coordination with the State's Administrative Office of the Courts, the Athens-Clarke County DUI/Drug Court, as a pilot court site, contracted with Siemens (formerly Dade-Behring) to establish the first in-house drug testing lab for a DUI/Drug Court in Georgia. Siemens provides necessary instrumentation for the testing component, while iMS Dynetics provides the software tools required to collect appropriate testing data. Specifically, the Wintox component collects, distributes, and reports on drug specimen samples. The COTTS component is a full database

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## Editor's Note

*Highway to Justice* is a publication of the American Bar Association ("ABA") and the National Highway Traffic Safety Administration ("NHTSA"). The views expressed in *Highway to Justice* are those of the author(s) only and not necessarily those of the ABA, the NHTSA, or the government agencies, courts, universities or law firms with whom the members are affiliated.

We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*. To do so, please forward the article to Hon. Yvette N. Diamond, Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031, or via e-mail: ydiamond@oah.state.md.us.

# Gossip As A Deterrent

By Judge James W. Zion, Tribal Judicial Outreach Liaison, New Mexico

I was driving back from a trial in the Navajo Nation court in Window Rock, Arizona, when I saw a very compelling Navajo-themed safety billboard—it was a photograph of a Navajo child on his bike, wearing a helmet, with the message that you should wear one. It had Navajo text below and I could not translate it. That is one of three very effective Navajo-themed billboards in the Gallup area.

Given that I am a new "JOL," I'm taking my job seriously. When I entered the Window Rock Police Station that lies below the court, I noted a Navajo Nation anti-DWI police poster. The same one was posted in the court waiting area, where people have no choice but to see it. Unfortunately, the poster was cluttered with too much information to be truly effective.

## Getting the Word Out

There are other ways to get the word out. The Honorable Irene Toledo is the presiding judge of the Crownpoint Judicial District, which is located in northwest New Mexico and covers a large geographic area. Judge Toledo met with Vickie Evans, a DWI manager in the Motor Vehicle Division of the New Mexico Taxation and Revenue Department. The purpose of the meeting was to coordinate information-sharing on impaired drivers and transfer Crownpoint court data into the New Mexico system. Judge Toledo told Evans that the Crownpoint court would share its information with the state of New Mexico and that she wanted people to find

out that the court was doing this. In other words, she wanted to use gossip as a deterrent.

When I asked Judge Toledo for permission to write this, she sent me a note that said, "I am really tough on DWI, even though our statute isn't very helpful. When I am ready to do arraignments for DWI, where I will likely get a guilty plea and impose a sentence, I have my staff check out New Mexico conviction listings."

You can find New Mexico conviction records on a New Mexico Judicial Branch web site in a search by name. Judge Toledo has that information before her for each defendant, and when she sees a second or third DWI, she imposes the maximum sentence allowed in Navajo Nation law. Judge Toledo put her court's commitment to sharing information with New Mexico into the gossip circuit around the Crownpoint district, which is a very effective way to spread the word.

While I was tempted to use the Indian Country theme of "the moccasin telegraph," I know that this kind of situation fits all of rural New Mexico. It's not just an Indian thing. People talk or gossip about their judges in rural communities, so what a judge has to say is fed into the gossip circuit and word spreads through the pipeline.

That's how I found out about this story. I gossiped with the court staff attorney.



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# In-House Drug Court

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participant management system which allows monitoring of an individual participant's testing regimen on a continuing basis. The data management system cost is included in drug testing costs. COTTS creates data management results with greater program functionality to manage different client caseloads and to determine specific needs for distinct populations. The data based system is Windows driven and customized to comply with the reporting requirements of Georgia courts.

All drug tests are tracked by specimen number pursuant to a blind testing method. All collected subject specimens are observed and are gender specific, meeting all chain of custody collection requirements. Substance Abuse & Mental Health Services Administration (SAMSHA) guidelines for testing requirements are followed, including recommended testing cut-off levels. The lab tests for cocaine, THC, opiates, benzodiazepines, amphetamines, EtG, LSD, and methadone. Samples are screened for dilution and adulterants. Currently, the laboratory, which is located in the courthouse, can run in excess of 500 drug tests per day and report the results the same day via hand-delivery, email, or fax. A lab technician has been appropriately trained, certified, and retained to conduct all drug tests.

In addition to running tests for the court's DUI/Drug Court population, the on-site laboratory runs tests for felony drug court

participants, pretrial intervention cases, probation offenders, child custody cases, divorce cases, and other court services. Since the court was able to negotiate a statewide contract price with Siemens for drug testing, our screening lab has been able to lower the unit cost per drug test to a price significantly lower than local private sector screening laboratories. At the present time, the laboratory is expanding testing services to perform drug screens for other governmental agencies, non-profit agencies, the University system, and certain private enterprises.

To date, the in-house drug court screening laboratory has satisfied the three factors deemed necessary for the program's future growth and sustainability. Without question, participant accountability has been increased as a consequence of increased participant drug testing and same day reporting of test results. Secondly, program drug testing cost has been significantly lowered as a result of a statewide contract price for each drug test unit. Reduction in drug test unit cost allows for increased testing of participants. Lastly, the laboratory is producing testing revenue that is being funneled back into the program to offset continuing operating costs. We anticipate that the screening lab will continue to be a growing funding resource insuring program sustainability for future years.

# Kiss Me, I'm Sober

By Judge Yvette N. Diamond, Judicial Fellow (Maryland)

For many Americans, St. Patrick's Day has become a popular occasion to go out and celebrate with friends and family. Unfortunately, due to the large



volume of impaired drivers, it has also become a very dangerous holiday. During St. Patrick's Day 2006, nearly half (44%) of the 105 drivers and motorcyclists involved in fatal crashes had a blood alcohol content (BAC) of .08 or above. And, 63% of those impaired drivers and motorcyclists with a BAC of .08 and higher died in a crash. In the end, a four leaf clover can only bring so much luck. It is not going to save you if you are involved in a drunk driving crash.

Sadly, many people still fail to understand or accept that alcohol, drugs, and driving don't mix. Indeed, impaired driving is no accident, nor is it a victimless crime. In 2006, 42,642 people were killed in motor vehicle crashes. Out of that number, 13,470 people were killed in traffic crashes that involved at least one driver or motorcyclist with a BAC of .08 or higher. Moreover, the general public still does not recognize that the tragedies and costs

from driving impaired go beyond the potential death and injury caused by impaired drivers.

One way to attack the problem is to implement well-publicized campaigns against impaired driving. When properly promoted and implemented, local impaired driving initiatives can have a deterrent effect and be very educational.

On its website, NHTSA has posted a promotional planner designed to provide State highway safety offices and local communities with information to support impaired driving initiatives in an effort to reduce the incidents of drunk driving crashes. Although the current one is geared to St. Patrick's Day, the strategies apply to all holidays in which people tend to celebrate by consuming excess amounts of alcohol. This information can be posted in courthouse waiting rooms as well as local watering holes that will be teeming with patrons on St. Patrick's Day.

## Don't Depend on Dumb Luck— Designate a Sober Driver Before the Party Begins

The program is predicated upon the familiar slogan, "Friends don't let friends drive drunk." It relies upon cooperation among friends so that the driver can enjoy a safe and festive holiday without jeopardizing his life, the lives of his passengers, and the lives of others on the road. The strate-

gies seem rather simplistic but are easily forgotten once an individual starts drinking:

- Plan a safe way home before the festivities begin;
- Before drinking, designate a sober driver and give that person the keys;
- If you're impaired, use a taxi, call a sober friend or family member, or use public transportation so you are sure to get home safely;
- Take advantage of community programs that offer free rides home for those who have been drinking;
- If you notice a drunk driver on the road, contact your local law enforcement;
- If you know someone who is about to drive or ride while impaired, take their keys and help them make other arrangements to get to where they are going safely.

Indeed, many establishments offer incentives for choosing not to partake such as providing free soft drinks and other non-alcoholic beverages to a designated driver. It gives new meaning to the phrase, "Kiss me, I'm sober." Further information about this program and other NHTSA traffic safety initiatives may be found at: [www.nhtsa.gov](http://www.nhtsa.gov).

# Medical Advisory Board Review of Problem Drivers

By Judge Yvette N. Diamond, Judicial Fellow (Maryland)

In most states, there is a mechanism for the agency overseeing the licensing of drivers to investigate individuals brought to their attention due to medical, psychiatric, alcohol, drug, and other issues that may impact on their fitness to drive safely. These entities are generally known as Medical Advisory Boards (MAB), and are comprised of physicians specializing in various areas of medicine and other health care professionals. They operate within the Motor Vehicle Administration (MVA) or comparable agency overseeing driver licensing to ensure that a driver is capable of

safely operating a motor vehicle.

While 37 jurisdictions have MABs, the scope of their activities varies greatly. In 33 states, MAB physicians most frequently conduct reviews of medical reports submitted by drivers' treating physicians to make fitness to drive determinations. In 5 states, MAB physicians interview referred drivers either in person or indirectly through the use of video, and only 3 states conduct hands-on screening or assessment functions. Some MABs review all cases referred to them while other boards review only those cases that cannot be handled through the application of medical guidelines by personnel in the MVA, either because the case falls outside of the guidelines or the physician reports are conflicting. MAB review also varies from state to state. In some jurisdictions, MAB review is reserved for cases where the driver appeals the MVA's decision. Across the jurisdictions with

MABs, the number of case reviews performed by the MAB ranges from less than 5 cases annually to 36,000 cases annually.

MAB referrals may be recommended by a variety of individuals, including law enforcement agencies, judges, attorneys, private physicians, hospitals or health care providers, and private citizens who file complaints. In particular, MAB review is an excellent option for a judge to consider when dealing with impaired drivers. While a judge may refer someone for an alcohol and/or drug assessment to determine the level of intervention necessary to address the underlying problem, that is geared to identifying the appropriate educational, treatment, or rehabilitation program for that individual. MAB review is specifically geared to addressing a person's fitness to drive, and the strategies and technology

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# Medical Advisory Board

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that may be used to ensure that the individual is not a threat to public safety. These recommendations and referrals are often made by administrative law judges or hearing officers who adjudicate cases regarding suspension or revocation of an individual's driver's license, and by specialized court judges who hear the underlying traffic cases.

MAB review may come about in a variety of ways. The MAB may review cases where an individual's driver's license has been suspended or revoked and he or she seeks to have it reinstated. In some situations, MAB review is mandatory before an individual may be licensed. The MAB may also review cases when it receives information that an individual has one of the following conditions: cerebral palsy, diabetes, epilepsy, multiple sclerosis, muscular dystrophy, heart condition, stroke, alcoholism or alcohol abuse, drug addiction, loss of limb or limbs, organic brain syndrome, manic depressive disorders (major affective disorders), schizophrenic disorders, and severe anxiety disorders. Review may also come about when the MAB receives information that an individual suffered a lapse of consciousness, blackout, or seizure.

## Maryland

In Maryland, anyone can contact the MVA about an individual driver's capability behind the wheel, potentially prompting a MAB referral. On February 13, 2008, the Maryland Court of Appeals held that the notice of a potential MAB referral need not be included in an Advice of Rights form provided to an individual when he or she is detained for impaired driving because it is a recommendation, not an administrative sanction under the Maryland Implied Consent Law. *MVA v. Delawter*, (No. 36, September Term 2007).

When a referral is received, the Maryland MVA's Driver Wellness and Safety Division (DW&S) mails the individual a packet

requesting documentation and information. That may include a health questionnaire to be completed by the individual's physician, a questionnaire to be completed by the individual, documentation of treatment to address the matter at issue, and a Consent for Release of Medical Information. Based upon that information, the DW&S may decide to refer an individual for an MAB evaluation. The MAB does not perform medical examinations. The physician evaluating the case primarily depends upon reports from physicians or treatment sources. However, the physician may ask the individual to come in for an interview.

After a thorough review of the individual's situation, the MAB returns a recommendation to the DW&S for final action. The MVA may take a variety of actions ranging from allowing an individual to drive to suspending that person's driving privileges indefinitely. In impaired driving cases, the MAB may require an individual to document completion of an alcohol or drug treatment program, regular attendance at self-help meetings for a specified amount of time, and/or sobriety for a specified amount of time before he or she is eligible for re-licensing. Once eligible, the MAB also may require an individual to install an ignition interlock device on his or her vehicle for a specified duration. It may also impose an indefinite alcohol restriction upon an individual's driver's license that may only be removed upon petition to the MAB. If an individual is not satisfied with the decision of the MAB, he has the right to request a hearing before an administrative law judge. In particularly troubling circumstances, the MAB may request an emergency suspension pending a full investigation of the individual's case. In such cases, the individual also has a right to request a hearing.

## Texas

In Texas, the Department of Public Safety has a Driver Improvement and Compliance Bureau (DIC), whose primary function is to help ensure the safety of the motoring public on Texas roadways. DIC has the statutory authority to suspend, revoke, disqualify or

cancel driving privileges of hazardous drivers. The DIC evaluates the driving performance of those who jeopardize the safety of others. The drivers are identified through receipt of convictions of traffic violations or receipt of information concerning a medical condition, which could prevent safe operation of a motor vehicle. Upon identification, the DIC takes corrective action that may result in the loss of a license and/or driving privilege. This includes out-of-state violations, as well as an adverse driving status in another state.

Texas also has a MAB, which consists of a panel of physicians appointed by the Texas Department of State Health Services. A physician from the panel convenes to review possible medical conditions as they relate to the driving ability of reported Texas drivers. The physician reviews medical documentation submitted by the subject's personal doctor regarding the condition in question. The Department of Public Safety acts in accordance with the medical findings of the MAB by enforcing the decisions of "medically incapable" or "medically approved to drive." A person who is found medically incapable of safely operating a motor vehicle is subject to license revocation.

A Texas driver may be reported to the MAB by physicians, family, friends, acquaintances, driver license field personnel, anonymously, or by admission of a possible health condition that may interfere with the safe operation of a motor vehicle upon application or renewal for a Texas driver license. Family, friends and anonymous reports are initially investigated by field personnel. These reports may be kept confidential, unless the subject requests the document through an open records request. All records are subject to becoming open records if the person requests an administrative hearing.

For further information about whether there is a MAB in a particular state and, if so, how it functions, go to [www.nhtsa.gov](http://www.nhtsa.gov), [www.aamva.org](http://www.aamva.org), or the website of the agency overseeing driver licensing in that state.

To learn more about programs offered by NHTSA, please contact one of the Judicial Fellows or Judicial Outreach Liaisons:

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