

# HIGHWAY TO JUSTICE

WINTER 2015

From The ABA and The National Highway Traffic Safety Administration

## UNIQUE CHALLENGES TO THE SUPERVISION OF IMPAIRED DRIVER PROBATIONERS

*Mark Stodola, American Probation and Parole Association (APPA) Probation Fellow*

According to the Bureau of Justice Statistics, in 2013 there were more than four and a half million individuals on community supervision in the United States.<sup>1</sup> Of this population approximately 15 percent of the individuals on probation or parole have a driving while impaired (DWI)<sup>2</sup> conviction and approximately 8 percent have multiple DWI convictions.<sup>3</sup> While statistics show that about two-thirds of individuals convicted of a DWI will self-correct, another one-third continue to drink, drive and pose a significant threat to our communities.<sup>4</sup> These are the high-risk drunk drivers who often end up on adult probation caseloads.

The Traffic Injury Research Foundation (TIRF) describes typical high-risk drunk drivers as being white males in their late 20s to early 30s, unemployed or under employed with a low level of education. They often have non-driving related criminal convictions in addition to multiple DWI arrests. This population does not readily acknowledge that their drinking and driving behaviors are criminal, and they are highly resistant to treatment.<sup>5</sup>

The approach to addressing the behaviors of most drunk drivers involves sanctions to prevent driving (e.g., license revocation or suspension, incarceration) or drinking and getting behind the wheel of a vehicle (e.g., ignition interlock device). However, high risk drunk drivers who receive a felony conviction and a term of probation are typically ordered to abstain from the use of alcohol.<sup>6</sup> It is not uncommon for these individuals to opt to serve a term of incarceration rather than serve a term of probation and address their behaviors in the community. Although the challenges to supervising this DWI population can be vexing, the reality is that they comprise just one of many high risk populations that find their way on to community supervision.

With the costs of prison and jail incarceration crippling local and state budgets, an array of high-risk offenders are finding themselves on probation. A typical adult probation caseload might consist of 70 or more individuals with convictions for drug offenses, thefts, domestic violence or sex offenses. Additionally, they may have significant mental health issues, involvement in gang activity or chronic poly-substance addictions that strain limited resources, while adding to the workload of the supervising

officer. However, with the advent of evidence-based practice and assessment-driven supervision, probation officers have the ability to work smarter and better focus resources where they are most needed.

When faced with the specter of effectively addressing what could be a lifetime of alcohol dependence on the part of an assigned probationer, community supervision officers need to use a variety of tools, strategies and approaches to hold probationers accountable while promoting positive behavioral change. The following are examples of approaches officers can use when working with the high risk DWI population.

**Assessments:** Actuarial risk/needs assessments provide officers with valuable information that can be used to determine an individual's level of risk to reoffend, as well as identify their criminogenic needs to be targeted for intervention. There are also a number of alcohol risk assessment instruments such as the Michigan Alcohol Screening Test (MAST) or the American Probation and Parole Association's Impaired Driver Assessment (IDA) tool that give probation officers direction in determining the appropriate resources for monitoring and treatment of probationers on supervision for impaired driving, as well as in assessing their risk (i.e., likelihood to commit another DWI) to the community.

**Supervision Plans:** Using assessments as a roadmap, probation officers are better able to develop individualized case or supervision plans that outline supervision strategies and treatment services that will help hold impaired driver probationers accountable and promote prosocial behavioral change.

**Partnership and Collaboration:** Quite simply, it is impossible for probation officers to adequately manage the needs of high risk drunk drivers without actively developing partnerships with programs, agencies, organizations, and individuals within the community to enhance and support probationer supervision, treatment and recovery. For example, the use of technologies such as ignition interlock and transdermal alcohol monitoring devices as well as breathalyzer and urinalysis testing for drugs and alcohol are invaluable tools to promote probationer accountability. This requires an officer to develop expertise with these technologies and, just as importantly, a working relationship with the service providers to ensure there is ongoing communication regarding the probationer's compliance.

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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 submit an article, please send it to the editor, Hon. Earl Penrod [penrod26d01@msn.com](mailto:penrod26d01@msn.com) with a copy to the staff liaison, [Gena.Taylor@americanbar.org](mailto:Gena.Taylor@americanbar.org). Please contact Ms. Taylor for editorial guidelines.

The deadline for submission of articles for the Spring issue is March 4.

## UNIQUE CHALLENGES TO THE SUPERVISION OF IMPAIRED DRIVER PROBATIONERS

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In addition, community-based substance abuse treatment programming is an essential component to the successful supervision of most high risk impaired driver probationers. Probation officers should actively engage with providers and communicate regularly about appropriate treatment regimen, program compliance, sobriety, and any obstacles to the individual's successful completion of treatment. Probation departments also have the responsibility to ensure that treatment providers are assessing participants and placing them in treatment programming that is evidence-based and meets their individual needs.

**Training and Research:** Probation agencies are facing competing community interests and priorities with limited resources and often lack a sufficient degree of training for officers assigned to manage complex criminal populations. When community corrections staff do not receive adequate training to aid in the supervision of impaired driver probationers (particularly those deemed high risk), the effectiveness of community supervision is compromised.<sup>7</sup> As such, it is imperative that those officers who supervise this challenging population have access to resources that will help them develop expertise with this population. Organizations such as the National Highway Traffic Safety Administration (NHTSA), the Traffic Injury Research Foundation (TIRF), The Foundation for Advancing Alcohol Responsibility, and the American Probation and Parole Association (APPA) offer websites with invaluable information (e.g., publications, online training programs) related to the latest research on alcohol addiction, risky use and drinking trends, as well as on strategies for the supervision of impaired driver probationers. Applying this information, as well as investing in local and regional training opportunities, are among the best strategies community corrections agencies can implement to minimize the challenges to supervising impaired drivers and offer a focused solution that enhances public health and safety.

- 1 The Bureau of Justice Statistics-[Probation and Parole in the United States, 2013](#)
- 2 Various terms are used to describe impaired driving. State laws generally use the terms Driving While Impaired and Driving Under the Influence (DUI); advocacy groups and members of the public may use the term "drunk driving" or even "hard core drunk driving." For the purposes of this document, the term "driving while impaired" (DWI) is being used as an inclusive and generic term and will include the operation of a motor vehicle following the use of alcohol, drugs, prescription and/or over-the-counter medications—separately or together.
- 3 The Century Council/American Probation and Parole Association-[Hardcore Drunk Driving Community Supervision Guide](#), 5-6
- 4 NHTSA [Traffic Tech, Knowledge Transfer](#) series number 85, February 1995
- 5 Robertson, Robyn-DUI-Impaired Drivers and Risk Assessment, What have we Learned? APPA Perspectives Magazine-Volume 38, number 3
- 6 American Probation and Parole Association, [Guidelines for Community Supervision of DWI Offenders](#), March 2008
- 7 American Probation and Parole Association, [Guidelines for Community Supervision of DWI Offenders](#), March 2008

## WHAT IS JUSTICE?

*Hon. Audrey Barger  
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The criminal justice system in the United States is vested with great power. This power is subject to checks and balances using a three-pronged approach. By design, the system must be presided over by a fair and impartial judge. Law enforcement and prosecution represent the government and a defender advises and speaks for the accused. Representatives of the government and defense counsel are not necessarily the antithesis of each other; their relationship is symbiotic and crucial for counterbalance.

From jurisdiction to jurisdiction, criminal justice systems vary from adequate to exemplary. An adequate criminal justice system upholds and defends constitutional rights to reach a lawful, right, or "just" result. However, the impact of an exemplary criminal justice system on the citizens in a community has the potential to change offender behavior to prevent deaths, particularly in the adjudication of impaired driving offenses.

When examining the scope of work performed within our criminal justice system, a murder offense is viewed as deserving of time, expertise, and resources. These cases are investigated and adjudicated with the greatest of care and conscience. These cases are legally complex and scientifically challenging. A victim's life is lost and the outcome may end in the most

serious of penalties for the accused. In 2012, a murder occurred within the United States once every 35.4 minutes<sup>1</sup>, totaling 14,827 deaths.<sup>2</sup>

Compared to murder offenses, criminal justice systems tend to underrate the importance of adjudicating impaired driving offenses. The statistics strongly contradict this assessment. Automotive fatalities involving drivers with a breath alcohol content of .08 or greater resulted in one death every 51 minutes in the United States, totaling 10,322 deaths in 2012.<sup>3</sup> These statistics do not include impaired driving fatalities resulting from drugged driving offenses, which indicate in 2012 another 5,765 fatalities resulted in instances where drivers tested positive for the presence of drugs.<sup>4</sup>

Both of these offense types result in significant mortality statistics and share complexity and challenges. Impaired driving offenses are subject to rapidly changing case and statutory law applicable to the offense itself, investigative techniques, and search and seizure procedure. Technological and scientific advances continue to be developed for use during investigation in the field which translates into evidentiary issues in the courtroom. Instruments have been developed to detect and monitor alcohol use. Emerging evidence-based practices for rehabilitation continue to be expanded upon and developed. Professionalism in the criminal justice field requires not only knowledge of these issues, but the commitment and ability to assure the application of that knowledge to impaired driving cases.

Upon arrest, steps should be taken to apply appropriate release conditions for alleged offenders as provided for by legislation and mandated by case law within the jurisdiction. First, careful consideration of the facts is imperative. Does the individual have a record of prior alcohol related offenses and/or prior impaired driving? Is s/he employed and what are the hours of employment? Was there a BAC of .15 or greater at the time of the offense? Was there a crash? Was the individual's driver's license administratively suspended at the time of the stop? Who was with the individual when the alleged offense was committed? Where does the individual live with respect to the location of the Court? What financial ability does the offender have?

Next, there should be an inventory of the resources available for pre-trial monitoring. Is there access to a 24/7 sobriety program?; urinalysis testing?; transdermal monitoring?; ignition interlock?; remote breath alcohol monitoring?; a counselor to provide a chemical dependency evaluation? Finally, the facts and resources available should be used to set pre-trial conditions that are the least restrictive to assure public safety and provide adequate monitoring to deter re-offense.

Those working in the criminal justice system must work together to locate and implement monitoring and evaluation resources within the community. All professions involved in the criminal justice system want to assure they are not placed in the position of dealing with the aftermath of impaired driver re-offense during the pre-trial period, particularly one that causes a fatality.

At trial, the science of investigative techniques and evidentiary issues arising in impaired driving offenses has changed significantly over the last several years. Each jurisdiction has a standard for expanding a traffic stop into an impaired driving investigation. Law enforcement officers receive extensive training designating them as Drug Recognition Experts (DREs). Standardized Field Sobriety Tests (SFSTs) are routinely administered by law enforcement during their investigations. Horizontal Gaze Nystagmus (HGN) is administered by law enforcement in some jurisdictions as a routine Standardized Field Sobriety Test, which may be admitted into evidence if a proper foundation is laid. Analysis of breath

and blood alcohol content has become routine in impaired driving offenses, and with that must come an understanding of the process, instrumentation, science, and administrative rules which govern each procedure. Proper investigation and administration of tests is compulsory. Knowledge of the issues in arguing for, against, and ruling on evidentiary issues in motions and at trial is imperative in proper acquittal or conviction of the accused.

In the event of a conviction, the role of the criminal justice system should shift to imposing the most effective sentence to rehabilitate the offender while protecting the public. As with setting bond conditions, it is of utmost importance that counsel work to provide the Court with as much information as possible for consideration. In addition to the information used to set bond conditions, assessment of chemical dependency and mental health needs as well as the offender's conduct while on release conditions should be considered.

Individuals working within every prong of the criminal justice system should make efforts to be educated about the various resources available for sentencing purposes. Justice is not about a passion for incarceration, implementation of a method for escaping accountability, or the application of a standard DWI sentence. Rather, justice for the individual is best served by a criminal justice system that takes into account the circumstances and needs of the individual. Professionals are acknowledging that long term chemical dependency treatment in an appropriate level of care, combined with intensive alcohol and drug monitoring for accountability, result in the greatest rehabilitative environment for the addicted offender.<sup>5</sup>

To this end, evidence-based DWI Courts and other treatment courts that serve impaired driving offenders have become more popular and are available in many areas. Enterprising rural jurisdictions have adopted a regional DWI Court model. Jurisdictions without those options have created programs like staggered sentencing, the 24/7 sobriety program for monitoring, and rapid referral for early assessment and treatment. Jurisdictions with sparse populations use a combination of chemical dependency treatment in conjunction with transdermal monitoring, ignition interlock, and remote breath alcohol monitoring.

For the criminal justice system to become effective in addressing these issues, continual training of personnel is critical. Both general and discipline-specific trainings are routinely offered. There are many free webinars that can be viewed on demand. For State by State jurisdictional questions visit the American Bar Association's website at [http://www.americanbar.org/groups/judicial/conferences/specialized\\_court\\_judges/NHTSA/nhtsa\\_liaisons.html](http://www.americanbar.org/groups/judicial/conferences/specialized_court_judges/NHTSA/nhtsa_liaisons.html). This listing will provide contact information for your Regional Judicial Outreach Liaison who can offer available resources, training opportunities, and further referral to the Judicial Outreach Liaison for your individual State.

The 2013 statistics on impaired driving fatalities will be released at year end. Exemplary criminal justice systems assure proficient investigation and adjudication of impaired driving offenses and rehabilitation of offenders. Working toward these goals within our communities has the capacity to reduce impaired driving fatalities in 2015 and subsequent years.

That is justice.

1 "2012 Crime Clock Statistics." *Crime in the United States 2012*. Federal Bureau of Investigations 30 November, 2014 <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/national-data>

2 "Table 1 Crime in the United States by Volume and Rate per 100,000 Inhabitants, 1993–2012." *Crime in the United States 2012*. Federal Bureau of Investigations 30 November, 2014 <http://www.fbi.gov/about-us/cjis/ucr/>

[crime-in-the-u.s./2012/crime-in-the-u.s.-2012/tables/1tabledataoverviewpdf/table\\_1\\_crime\\_in\\_the\\_unit-ed\\_states\\_by\\_volume\\_and\\_rate\\_per\\_100000\\_inhabitants\\_1993-2012.xls](http://www.fbi.gov/2012/crime-in-the-u.s.-2012/tables/1tabledataoverviewpdf/table_1_crime_in_the_unit-ed_states_by_volume_and_rate_per_100000_inhabitants_1993-2012.xls)

3 "Alcohol-Impaired Driving." *Traffic Safety Facts 2012 Data*. DOT HS 811 870, December, 2013, US Department of Transportation, National Highway Traffic Safety Administration National Center for Statistics and Analysis. 30 November 2014 <http://www.nrd.nhtsa.dot.gov/Pubs/811870.pdf>

4 "Understanding the Limitations of Drug Test Information, Reporting, and Testing Practices in Fatal Crashes." *Traffic Safety Facts Research Note*. DOT HS 812 072, November, 2014, US Department of Transportation, National Highway Traffic Safety Administration National Center for Statistics and Analysis. 30 November 2014 <http://www.nrd.nhtsa.dot.gov/Pubs/812072.pdf>

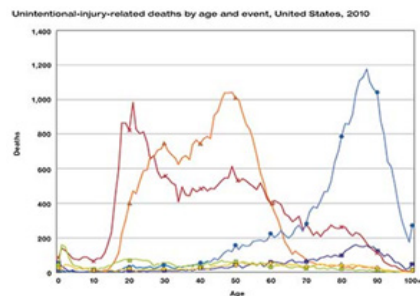
5 "Learn." National Center for DWI Courts. 30 November, 2014 <http://www.dwicourts.org/learn-0>

## KEEPING TEEN DRIVERS SAFE – KEEPING THEM ALIVE AT 25

Susan Crotty, Program Development Executive  
Driver Safety – Courts Division  
National Safety Council

Teaching a teenager how to drive can be one of the most frustrating and frightening experiences of a parent's life. Receiving a driver's license is an exhilarating moment in a teen's life. It is a traditional rite of passage, giving the new driver a sense of liberation and adult responsibility. But it also is an incredibly dangerous time. As soon as teens begin driving alone, they are entering one of the most dangerous periods of their young lives.

The National Highway Traffic Safety Administration (NHTSA) reports more than 5,000 people die each year in crashes (NHTSA Fatality Analysis Reporting System 2012) involving teen drivers, and two-thirds of those fatalities are people other than the teen driver – passengers, other drivers, pedestrians and cyclists. According to NHTSA, students are 50 times more likely to arrive safely at school if they ride the bus rather than drive themselves. Add passengers to the car and a teen driver's crash risk nearly doubles; it continues to grow with each additional passenger.



Seemingly overnight, children go from one of the safest modes of transportation – school buses – to driving themselves, ushering in the most dangerous time of teens' lives. Car crashes are the No.

1 killer of teens in this country, and teen crashes happen with alarming frequency. The National Safety Council (NSC) estimates 50 percent of teens will be involved in crashes before they graduate from high school. Most of these crashes will be minor, but some will have lasting effects. Parents will bury children and friends will graduate alone simply because of a preventable car crash.

### Impact of GDL

During the first few months of licensure, the crash risk for teen drivers is at its peak. [Daniel R. Mayhew, H.M. Simpson, A. Pak, "Changes in Collision Rates Among Novice Drivers During the First Months of Driving," *Accident Analysis and Prevention* (September 2003)] But studies show that this risk can be greatly reduced by increasing a novice driver's experience under controlled circumstances – a key concept in the success of Graduated Drivers Licensing (GDL) programs being adopted and implemented in states throughout the country.

GDL is proven to work. States with strong GDL systems have seen as much as a 40 percent reduction in teen-related crashes. [Jean T.

Shope, "Graduated Driver Licensing: Review of Evaluation Results since 2002," 38(2):165–175, *Journal of Safety Research*, (2007)] Studies performed by the NHTSA and the Insurance Institute for Highway Safety came to the same conclusions. A 2010 study by IIHS found a 21 percent reduction in the fatal crash rate of 15- to 17-year-olds when beginner drivers were prohibited from driving with any teenagers in their vehicles versus allowing two or more teens.

### Why teens crash and why crashes affect us all

Contrary to popular belief, most teens do not crash because they are engaging in dangerous behaviors. Teens crash most often because they are inexperienced drivers. [Allison E. Curry, Jessica Hafetz, Michael J. Kallan, Flaura Koplin Winston, Dennis R. Durbin, "Prevalence of Teen Driver Errors Leading to Serious Motor Vehicle Crashes," *Accident Analysis and Prevention* (July 2011)]. It takes years for drivers to learn to scan the road ahead, anticipate what might happen, develop instinctive responses to what is happening and adjust to complex driving environments. New drivers need to gradually gain experience in lower-risk driving environments and they must avoid situations that detract from the task of driving.

Distractions such as carrying young passengers and using cell phones can divert teen drivers' attention in a dangerous way. Two or more peer passengers more than triples the risk of a fatal crash when a teen is at the wheel [Flaura Koplin Winston, Michael J. Kallan, Teresa Senserrick, Michael R. Elliott, "Risk Factors for Death Among Older Children and Teenage Motor Vehicle Passengers," 162(3): 259, *Archives of Pediatric Medicine* (March 2008)]. And drivers of any age or level of experience are four times as likely to crash while using cell phones, regardless of whether the devices are hands-free or handheld [Donald A. Redelmeier, M.D., Robert J. Tibshirani, Ph.D., "Association Between Cellular-Telephone Calls and Motor Vehicle Collisions," 336-7, *The New England Journal of Medicine*, (February 13, 1997)]. Parents can have significant control over these risk factors. They can reinforce the importance of vigilant and focused driving, set good examples for younger drivers and passengers, and restrict driving privileges when teens disregard their own safety.

Developing good teen drivers not only reduces crashes and saves lives, it also reduces the financial impact of teen crashes and saves money. The cost of teen crashes is about \$37 billion each year. The bills fall largely to individuals and taxpayers who must pay higher insurance premiums, medical costs, and state Medicaid costs to care for the uninsured and lost wages. Studies show strong state Graduated Driver Licensing (GDL) policies help offset these economic costs and saves lives. According to the 2011 License to Save report issued by The Allstate Foundation, the U.S. could save more than 2,000 lives – and \$13 billion each year – if all 50 states and D.C. strengthened existing teen driving laws and implemented best-practice GDL systems. [National Safety Council, "License to Save," The Allstate Foundation (December 2011)].

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## KEEPING TEEN DRIVERS SAFE – KEEPING THEM ALIVE AT 25 continued from page 4

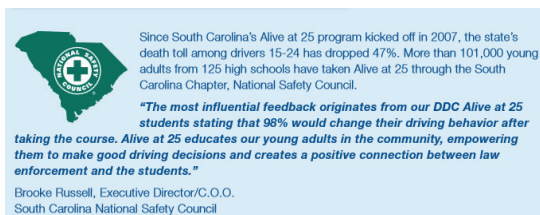
### Parental involvement

Studies show parents have the most influence over their teens' driving habits [TRU, The Allstate Foundation, (2013)]. Teens are often blamed unfairly for their driving mistakes. But they are inexperienced behind the wheel and it takes far longer than the typical driving permit period to develop the experience and skill to drive safely.

With strong state GDL policies – and education about and enforcement of those policies – change is possible and teen crash rates can be reduced. Serving as the nation's leading safety advocate for more than 100 years, the National Safety Council is a nonprofit organization with the mission to save lives by preventing injuries and deaths at work, in homes and communities, and on the road through leadership, research, education and advocacy. Working to make the world measurably safer, Teen traffic violators can benefit from driver safety training to learn proven strategies that can improve the safety of young drivers on the road.

### Education

**Alive at 25** was specifically developed by NSC to help reduce teen driver collisions, injuries and fatalities caused by motor vehicle crashes. Designed to complement traditional driver education programs that focus on state laws and road and vehicle handling, Alive at 25 helps young drivers take greater responsibility for their driving by focusing on behavior, judgment and decision making.



### Going further with alternative sentencing options

Proven to help teach young adults to drive safely and responsibly, Alive at 25 is a highly-interactive course that helps young adults under the age of 25 take greater responsibility for their driving by focusing on behavior, judgment, and decision making. Available in English and Spanish, this 4-hour classroom course is an excellent complement to driver education programs that traditionally focus on state laws and vehicle and road handling. This driver training program helps teach young drivers that there are consequences to their driving behavior and provides the tools for making positive choices. Through interactive media segments, group discussions, role playing and workbook exercises, young drivers develop convictions and strategies that keep them safe on the road. With a strong emphasis on classroom participation, teens are encouraged to join in non-threatening, non-judgmental discussions – exploring through this behavior modification course how changing driver behavior makes personal, legal and financial sense. After taking a final written test, students who pass receive a certificate of completion to turn back into the court proving their participation in this course.

### New direction for traffic violators

Nashville and Davidson County Tennessee General Sessions Court has used National Safety Council Defensive Driving Course curricula since 1984. The General Sessions Judges agree that the National Safety Council (NSC) offers the most comprehensive defensive driving program available.



*"NSC stands behind their research and we depend on accurate data."*

On average, 27,000 people a year enroll in our courts traffic classes

*"NSC has been behind our efforts 100% and has contributed to the overall success by making course materials and information available on short notice. The customer service staff is the best in the country."*

John Slate, Traffic Education Director

Alive at 25 features proven, effective facilitation methods for teens learning to drive and young adults who drive as part as their job responsibilities by helping them to change driver attitudes and behaviors. It provides skill practices and defensive driving techniques to help young adults drive safe and more responsibly plus coping techniques addressing peer pressure, distractions, cell phone use, and driving hazards before those instances occur. Knowing when and how to safely hand those keys over to our nation's youngest, most vulnerable drivers will help save lives and make our roadways safer for all motorists.

## DATES TO REMEMBER:

**February 1** Super Bowl XLIX



**March 4-6** NCSCJ Traffic Court Seminar  
Hotel Contessa  
San Antonio TX  
[www.ambar.org/2015TrafficSeminar](http://www.ambar.org/2015TrafficSeminar)

**March 15 - 17** Lifesavers  
Chicago, IL  
<http://www.lifesaversconference.org/>

**March 17** St. Patrick's Day



**March 23-26** Behind the Wheel: Today's Traffic Offender:  
Reno, Nevada  
<https://register.judges.org//>

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## DON'T FORGET

Valuable resources can be found at these sites:

Traffic Resource Center for Judges  
[www.trafficresourcecenter.org](http://www.trafficresourcecenter.org)

NHTSA  
[www.nhtsa.gov](http://www.nhtsa.gov)

