

HIGHWAY TO JUSTICE

SUMMER 2014

From The ABA and The National Highway Traffic Safety Administration

THE EVALUATION OF THE THIRD YEAR OF MICHIGAN'S DWI COURT IGNITION INTERLOCK PROGRAM

Judge Harvey J. Hoffman
ABA/NHTSA Fellow Emeritus

Seemingly since the days of the Model T, federal law has required that the driver's licenses for repeat drunk drivers be revoked. State legislatures dutifully followed suit, for very legitimate highway safety reasons. Since repeat DWI offenders are the primary target population of DWI Courts, and since these programs require heavy participant involvement in treatment, testing and court appearances, the lack of licenses has been a major brake on DWI Court development and participant success.

Recently federal law, 23 USC Section 164(a)(4)(A), was amended to allow repeat DWI offenders to receive restricted licenses if they placed ignition interlocks on all of their vehicles. The terms of the restricted licenses were left to the discretion of the states.

In 2010, the Michigan Legislature enacted a law allowing repeat DWI offenders to receive restricted licenses after a 45 day hard suspension if they had interlocks installed on their vehicles and were participants in one of Michigan's DWI Courts. The restricted licenses allow the participants to drive to and from work and in the course of employment, as well as to and from school, court, probation meetings, treatment, drug and alcohol testing, interlock facilities, and court ordered self help meetings and others.

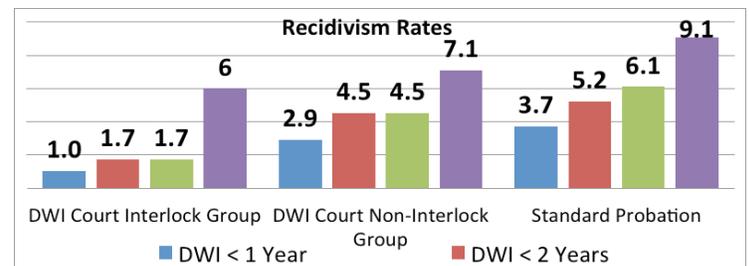
The legislation requires the Michigan Association of Drug Court Professionals (MADCP) to undertake an evaluation of the effectiveness of the program and to report outcomes annually. The research design was developed by Drs. Christopher Kierkus, Brian Johnson, and Jessica Parks in consultation with Dr. Doug Marlowe. This writing summarizes the major findings of the third year of the study.

Three groups are studied. The first group consists of repeat DWI offenders in five of Michigan DWI Courts who have ignition interlocks on their vehicles with restricted licenses (DWI Court Interlock Group). The second group is comprised of repeat DWI offenders from the same five DWI Courts, with the same judges, probation departments

and treatment programs from the year prior to the start of the DWI Court Ignition Interlock Program (DWI Court Non Interlock Group). The third group is made of repeat DWI offenders demographically matched to the other two groups who are on standard probation (Standard Probation).

Two types of recidivism are measured: new DWI convictions and any new conviction. These group's recidivism numbers are also broken down by participants in the program up to two years (people generally still on probation) and people in the program for over two years (people who have completed probation). The recidivism numbers are drawn from actual state records for new convictions.

As demonstrated by the chart below, the DWI Court Interlock Group outperformed the other groups with significantly lower recidivism in both DWI convictions and all convictions. Possibly the most telling numbers relate to the new DWI convictions after two years in the program (people no longer on probation). How people do when they are no longer under court supervision is where the rubber really meets the road for highway safety purposes. The DWI Court Interlock Group has a DWI recidivism rate of 1.7% as compared to the DWI Court Non Interlock Group with 4.5% and Standard Probation at 5.2%.



A second interesting measure is Compliance with Interlock Orders. This measures whether the participants in the DWI Court Interlock Group put the devices on their vehicles when ordered by the judge. The 98.2% compliance rate is a surprisingly strong number. However, one must consider that the participants appear before the judge

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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 with a copy to the staff liaison, Gena.Taylor@americanbar.org. Please contact Ms. Taylor for editorial guidelines.

The deadline for submission of articles for the Fall issue is August 21.

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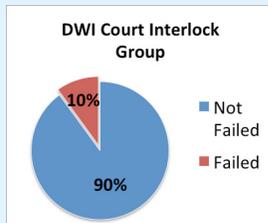
every two weeks and interlock providers have e-mail communication with the probation officers wherein they report participants that do not comply. Failure to install the devices frequently means that the participant must spend the next weekend in jail. Furthermore, and possibly more significantly, the participants know that this is the only way that they can receive any type of license in the foreseeable future.

I have sat in DWI Court for over 17 years, and I have never seen anything that comes close to the motivating power of these licenses for repeat DWI offenders. We have a waiting list for people trying to get into my DWI Court and it has nothing to do with the magnetism of my personality, or some sudden desire for these offenders to become clean and sober.

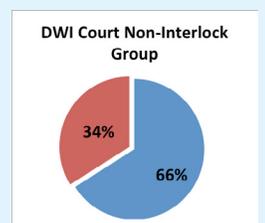


Two measures between the DWI Court Interlock Group and the DWI Court Non Interlock Group are also worth consideration. The Program Failure Rate (people who don't successfully complete DWI Court) for people in the DWI Court Interlock Group is 10%. The Program Failure Rate for the DWI Court Non Interlock Group is 34%, a number similar to what has been seen in other DWI Courts around the country.

We are not comparing apples and oranges. These are the same DWI Courts, with the same judges, probation departments, and treatment providers. It may be suggested that the higher motivation evident in the Interlock Group helps to keep participants in their DWI Courts for longer periods.

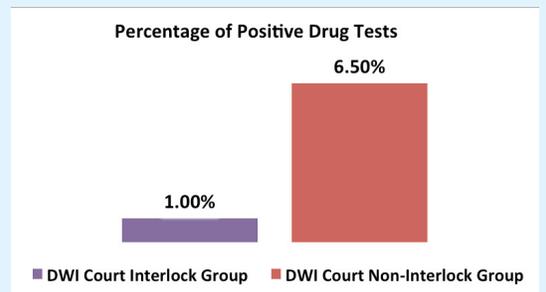


Finally, the study addressed the percent of program participants who had positive drug screens while in the programs. The DWI Court Interlock Group had a positive screen rate of 1.0% while the DWI Court Non Interlock Group had a positive screen rate of 6.51%.



This may indicate that the more highly motivated Interlock Group participants are taking steps to make other aspect of their lives more manageable rather than simply becoming dry drunks.

The numbers reported above have convinced the MADCP Board that the study should be extended for an additional two years. This will provide larger numbers of participants and will allow more time to study participants after they leave probation.



In a related subject, the restricted licenses under the DWI Court Ignition Interlock Program have, for the first time, allowed participants to lawfully drive between jurisdictions to participate in DWI Court. An article about Michigan's approach to Regional DWI Courts will be presented in a later issue of Highway to Justice.

TRAFFIC SAFETY, IS THY NAME COMPLACENCY?

David Wallace

Traffic Safety Consultant, AKA Traffic Safety Guy, Alexandria, VA

Did you know that motor traffic crashes are the number one cause of death for people ages 8 to 24?

Did you know that crashes are the second leading cause of death for those from 4 to 7 and 25 to 34?

More people between the ages of 4-34 die as the result of motor vehicle crashes than die from homicide or suicide. These fatality statistics do not include the significant number of life-altering injuries that occur daily. What is especially troubling is that the vast majority of crashes are caused by human error, mistakes that could have been avoided, thus preventing the resulting deaths and injuries.

This article is a call to action—a call for judges and other traffic safety professionals to step up, speak out, and resolve to do more that impacts our families, our friends and our communities. The judicial canons permit this, and as community leaders, I believe it is a moral obligation.

We awake in the morning, read the newspaper, listen to the radio, watch the morning news on TV, and invariably, we will hear about a crash that happened last night where a teen was going too fast, or of a college student who was out drinking and crashed into a tree, or of a man who killed an elderly couple because he was texting and driving. The list is endless: every day approximately 90 people die and 6,500 people are injured in motor vehicle crashes. We hear the reports of death and injury, yet many of us remain silent.

With so many preventable deaths and injuries resulting from traffic crashes, why is this issue shuffled off to the side? We lament the deaths and the injuries, but it is as if we see it as someone else's responsibility to resolve this travesty.

Action Through Personal Tragedy

Traffic safety is one of the few things that intersects everyone's lives; we drive to work, to visit family, to get groceries, to see a movie. We take driving for granted, and apparently the preventable deaths and injuries as well. Everyone reading this article knows of someone who has died in a car crash, or who was injured because a driver wasn't paying attention or drove impaired or was texting on a cell phone.

Unfortunately, as with many issues, it seems to take a close personal tragedy before we as individuals take action. Mother's Against Drunk Driving, Stop Distractions, and People Against Distracted Driving all started because the organizations' founders suffered a close personal loss. They then recognized that they could make a difference and help prevent future deaths.

It is that knowledge that we can make a difference that should make each one of us speak out, without waiting for that phone call in the middle of the night. Each of us has the power to raise awareness on the need to have a child safety seat inspected so our children are as safe as possible, and that talking on a phone increases a person's risk for a crash, or the simple fact of fastening a seat belt helps prevent

injury and death—each of these steps make a difference in saving lives, one person at a time.

A Voice in the Wilderness?

Raising awareness on traffic safety saves lives. As the Traffic Safety Guy, my goal is to educate the public through my traffic safety blog, my Highway to Safety podcast, and in speaking with the media. Of course, the more who speak up, the better the message is heard, and acted on.

Across the country over the last decade prosecutors, defense counsel, and law enforcement have come together to proactively address traffic safety issues—impaired driving, whether by drugs or alcohol; repeat offenders; seat belts and now distracted driving. Judges must be an integral part of this endeavor.

As community leaders, judges can help spread the traffic safety message. Judges have a bully pulpit that few others ever achieve. Judges bring a unique perspective, seeing both those who were injured and those who caused preventable traffic crashes. As a respected voice of reason, judges can be leaders in the effort to raise awareness on topics such as alcohol and drug impaired driving, distracted driving, the need to wear a seat belt, the dangers of speeding, and the importance of child safety seats.

A number of judges already hold court at high schools. But who has gone to an elementary school and talked with children about bicycle safety? Judges can share what is seen in the courtroom and use it to educate and forewarn others, in an effort to lower the rate of injuries and deaths on our streets and highways. The variety of topics is endless, for example:

- Speaking on the importance of child safety seats to medical professionals
- Telling members of the Rotary about the dangers of texting and driving
- Talking about the harms of underage drinking with a class of 9th graders
- Revealing the risks of distracted driving (beyond cell phones) to the Kiwanis
- Sharing with the Jaycees about the critical importance of wearing a seat belt or a motorcycle helmet
- Speaking to the School Board on the importance of having and enforcing a seat belt use policy for all students and school district employees

Judges bring with them the authority of their position and an understanding of what it all means from being in a courtroom.

Judicial Canons

I have worked with judges for years, especially during my tenure as director of the National Center for DWI Courts. I recognize the vital requirement of judges remaining impartial; the ethical, and I would even say the moral, obligation to demonstrate that judges and the justice system are impartial and fair.

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There is no question that before a judge should be a proponent on any issue, he or she must review the Judicial Canons in the appropriate state. Having recognized that concern, the Honorable Larry Sage stated:

“Much has been written about judicial ethics and the ethical propriety of extra-judicial community outreach activities. Numerous Ethics Advisory and/or Committee Opinions have been issued on this subject and several cases have addressed

the topic. At the 2005 ABA Annual Meeting, the National Conference of Specialized Court Judges sponsored a seminar on “The Ethics of Judicial Community Outreach.” All of the aforementioned concluded that community judicial outreach may be done in compliance with all Codes/Canons of Judicial Conduct. More importantly, judicial community outreach should be done and should especially be directed to school children. This is so because the bottom line is that community outreach saves lives.”

That last sentence is a powerful statement: “community outreach saves lives.” Each one of us can be a life saver.

Again, always check the judicial canons in your state. Some states have specific opinions on this very topic.

Resources Are Available

One possible limitation on speaking up might be the lack of specific knowledge on a topic(s), but this is easily remedied. Every state has a State Highway Safety Office and each office collects and shares information on traffic safety in your state. (<http://www.ghsa.org/html/links/shsos.html>.) Additionally, a dozen states now have a Judicial Outreach Liaison (JOL), a judge who is available to help inform you on traffic safety matters. Also, there are two national NHTSA Judicial Fellows and most of the ten National Highway Traffic Safety Administration (NHTSA) regions have a Regional JOL. Finally, there are a number of other resources, including the National Judicial College and the National Center for State Courts, which has the [Traffic Resource Center for Judges](#).

Make Your Voice Heard

Judges have the ability to reach out into the community, speaking to schools, to Kiwanis, Rotary, and others with an authoritative voice like no one else in the community, even possibly sharing specific examples from court dockets: that case where a driver was texting and crashed her car resulting in a limp for the rest of her life, or a speeder who ran a stop sign on the way to work, causing another driver to crash, resulting in life-altering injuries to the occupants in the other vehicle. These real-life examples will resonate with your audience.

No longer can we sit on the side and wait until that personal tragedy happens; complacency is the enemy. Knowledge is power. Judges have that knowledge. Your voices make a difference in the courtroom. Your voices can make a difference in your community.

1. Motor Vehicle Traffic Crashes as a Leading Cause Of Death in the United States, 2008 and 2009, Traffic Safety Facts—Research Note, National Highway Traffic Safety Administration, DOT HS 811 620, May 2012.
2. 2012 Motor Vehicle Crashes: Overview, Traffic Safety Facts—Research Note, National Highway Traffic Safety Administration, DOT HS 811 856, November 2013.
3. Judicial Community Outreach, Hon. Larry Sage, ABA / NHTSA Judicial Outreach Liaison – Western Region, Highway to Justice, Fall 2007.
4. “Judges may appear in noncommercial public service advertisements designed to promote the law, i.e. the child restraint law, and public safety.” Alabama Judicial Inquiry Commission Opinion 85-244. See also: Can Impaired Driving Stakeholders Reason Together? Hon. Karl Grube, Florida Judicial Outreach Liaison, Highway to Justice, September 2012.
5. In this issue of *Highway to Justice* you can find a complete list of State JOLs, NHTSA Judicial Fellows and NHTSA Regional JOLs
6. www.trafficresourcecenter.org



*Judge Chaney W. Taylor, Jr.
Liaison, National Highway
Traffic Safety Administration
Region 7*

The ABA has recently entered into an agreement with Judge Chaney W. Taylor, Jr. to serve as the Judicial Outreach

Liaison for the National Highway Traffic Safety Administration (NHTSA) Region 7 (Iowa, Nebraska, Kansas, Missouri, Arkansas) office. The JOL program offers an opportunity to promote traffic safety, improve community outreach, provide quality education and promote confidence and trust in the judiciary. Outreach efforts focus on mobilizing support for NHTSA’s impaired driving and other traffic safety activities. Funding for the position is provided for through a cooperative agreement with NHTSA

Judge Taylor has served on the Independence County (Arkansas) District Court bench since 2005. He is a graduate of the University of Arkansas College of Pharmacy (B.S. degree), and of the University of

Arkansas College of Law (J.D.). Prior to assuming the bench he had a law practice in Batesville, AR.

In 2009 Judge Taylor started the first DWI Court program in the state of Arkansas. His team has been active in outreach to the community and he has been a frequent speaker at judicial conferences, including New District Judge Orientation, and programs to educate the public about the DWI Court program.

He is a member of the Arkansas District Judges Council Board of Directors and Chair of that group’s DWI Courts Committee. In 2014 he was chosen Secretary-Treasurer of the group. He also serves on the Arkansas Supreme Court Committee for Security and Emergency Preparedness.

Judge Taylor received the 2003 Hands of Empowerment Award from the Arkansas Office of Family Violence Prevention. In 2007 the District Judicial Council recognized him for his service on the Arkansas District Court Security Task Force.

BACK TO THE FUTURE WITH DISTRACTED DRIVING

Hon. Peggy Fulton Hora (Ret.)
JOL Region 9, Walnut Creek CA

Driving while distracted is a continuing problem. In recent surveys “...more than eight in ten drivers believed it was completely unacceptable for a motorist to text or email behind the wheel, [yet] more than a third admitted to reading messages while driving, and more than a quarter reported sending them” Even though we know we shouldn’t be texting and driving, we still do it. A Virginia Tech study showed that although two seconds seems to be the safe amount of time a driver should look away from the road, texters... “tended to look away for as much as 4.6 seconds during a 6-second period. In effect, people lose track of time when texting.”

According to The Impact of Hand-Held and Hands-Free Cell Phone Use on Driving Performance and Safety Critical Event Risk, “visual-manual tasks associated with hand-held phones and other portable devices increased the risk of getting into a crash by three times.” One in five young drivers who die in crashes, according to latest government statistics, was using a cell phone.

NHTSA’s voluntary guidelines released about a year ago ask carmakers to install interior devices that limit the time a driver’s eyes leave the road. The guidelines also recommend disabling several operations unless the vehicle is stopped and in park, such as:

- Manual text entry for the purposes of text messaging and internet browsing;
- Video-based entertainment and communications like video phoning or video conferencing;
- Display of certain types of text, including text messages, web pages, social media content.

As technology advances we struggle to keep up with such new gadgets as Google Glass and fully-integrated vehicles that will allow texting, calling, messaging and other interactions while driving.

Google Glass

Google Glass is a wearable computer that allows you to see a “screen” while looking through glasses frames. Google released designer frames in January of this year (\$225) and the ability to install Google Glass onto prescription lenses is just around the corner. There is a touchpad on the side of the Glass and photographs can be taken from them with the wink of an eye. Google Glass comes equipped with apps such as Google Maps and Gmail and outside vendors such as The New York Times, CNN, Facebook and Twitter have developed applications as well. The device is operated through voice commands.

Concerns about this exciting innovation popped up almost immediately. Privacy experts worry about the use of Google Glass’s facial recognition technology predicting that there will be no privacy anywhere in public. A Seattle “dive bar” immediately banned Google Glass as a publicity stunt. Las Vegas casinos announced Google Glass would not be welcome while gambling

or seeing shows. A New York restaurant, Feast, claimed Google Glass was hurting their business after a series of one star reviews posted on Google.

Police are beginning to use Google Glass in their investigations. Law enforcement in Dubai are using it to help identify stolen cars and an app has been developed to take photos of traffic violations.



West Virginia became the first state to introduce legislation to ban their use while driving but, for reasons of timing, the bill will have to be reintroduced next session. Illinois, Delaware and Missouri have all considered bills and Google has hired lobbyists to defeat them. Several other states have legislation in the pipeline.

So far as is known, the first court case involving Google Glass was decided in January in San Diego, California. A web developer was stopped for speeding and cited for wearing the device. The judge dismissed both charges because there was insufficient evidence that Google Glass was engaged while she was driving. There was no explanation why the court dismissed the speeding charge.

It is estimated that 6.6 million pair of Google Glass will be in use within two years. Policymakers should get up to speed on these new technologies and develop guidelines for their use by drivers.

1. Arnold, L.S., Girasek, D.C., Tefft, B.C., and Grabowski, J.G. (2013). Temporal Trends in Indicators of Traffic Safety Culture among Drivers in the United States (2009-2012). Washington, DC: AAA Foundation for Traffic Safety. Available: <https://www.aaafoundation.org/sites/default/files/TSCI%20Trends%20Final%20Formatted%20AAAFTS.pdf>.
2. Simons, Daniel J. and Christopher Chabris, “Is Google Glass Dangerous?,” The New York Times (May 24, 2014)
3. <http://www.nhtsa.gov/About+NHTSA/Press+Releases/U.S.+DOT+Releases+Guidelines+to+Minimize+In-Vehicle+Distractions>
4. Distraction.gov
5. Id at 2.
6. For a first hand account of how Google Glass operates, see: Pogue, David, “Google Glass and the Future of Technology,” The New York Times (Sept. 13, 2012)
7. Streitfeld, David, “Google Glass Picks Up Early Signal: Keep Out,” The New York Times (May 6, 2013)
8. Dickey, Megan Rose, “A Restaurant Claims Google ‘Glassholes’ Hurt Its Reviews,” Business Insider (May 24, 2014)
9. Edwards, Jim, “Google Glass is Going To Be Huge, And Most People Have No Idea Why,” Business Insider (June 9, 2014)
10. Levine, Dan, “Exclusive: Google sets roadblocks to stop distracted driving legislation,” Reuters (Feb. 25, 2014)
11. A video of the judge’s decision may be found at: <http://www.nytimes.com/video/multimedia/10000002656015/woman-wearing-google-glass-while-driving-avoids-ticket.html?action=click&module=Search®ion=searchResults%230&version=&url=http%3A%2F%2Fquery.nytimes.com%2Fsearch%2Fsite%2F3Faction%3Dclick%2Fregion%3DMasthead%26gtype%3DHomepage%26module%3DSearchSubmit%26contentCollection%3DHomepage%26t%3Dqry316%23%2FGoogle+Glass+driving>

CONTACT INFO

To learn more about programs offered by NHTSA, please contact one of the following:

Judicial Fellow:

Hon. Earl Penrod: Penrod26d01@msn.com

Tribal Courts Fellow

Hon. J. Matthew Martin: abajudicialfellow@gmail.com

Judicial Outreach Liaisons:

Hon. Neil Edward Axel, Judicial Outreach Liaison, Region 3 (North Carolina, Virginia, Kentucky, West Virginia, Maryland, Delaware, District of Columbia):
NeilAxel49@gmail.com

Hon. Phyllis McMillen, Judicial Outreach Liaison, Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):
mcmillen008@gmail.com

Hon. Chaney W. Taylor, Jr., Judicial Outreach Liaison, Region 7 (Kowa, Missouri, Arkansas, Kansas, Nebraska): ctaylorjol@gmail.com

Hon. Mary A. Celeste, Judicial Outreach Liaison, Region 8 (Nevada, Utah, Wyoming, Colorado, North Dakota, South Dakota):
attcel@aol.com

Hon. Peggy Hora, Judicial Outreach Liaison, Region 9 (Arizona, California, Pacific Territories): peggyhora@sbcglobal.net

Hon. Mary Jane Knisely, Judicial Outreach Liaison, Region 10 (Montana, Idaho, Oregon, Washington, Alaska): maryjaneknisely@gmail.com

NEWS FROM THE TRAFFIC RESOURCE CENTER FOR JUDGES



TRAFFIC RESOURCE CENTER

The Traffic Resource Center for Judges began a new feature in January, 2014. Each month an "issue brief" has been added to the website. The issue briefs are designed to be a snapshot of the information that is currently available on specific topics that would be of interest to a judicial audience. For example, the issue brief for March, 2014 reviewed the statutory limitations in place in some states that restrict the ability of the prosecution and/or the court to plea bargain impaired driving cases. The Traffic Resource Center for Judges will continue to release issue briefs on a monthly basis for the foreseeable future. Suggestions for topics for future issue briefs are welcomed and please email any ideas to Greg Hurley at ghurley@ncsc.org. A listing of the current issue briefs that are available are below and new issue briefs will be posted monthly at <http://home.trafficresourcecenter.org/>.

["Vulnerable Users" Statutes \(January 2014\)](#)

[Electronic Citations: Fees and Disbursements \(February 2014\)](#)

[Statutory Limitations on Plea Bargaining of Impaired Driving Cases \(March 2014\)](#)

[Judicial Traffic Resources in the NCSC Library \(April 2014\)](#)

[What Constitutes Driving? \(May 2014\)](#)

[DWI/DUI Courts \(June 2014\)](#)

[Happy Hour Restrictions \(July 2014\)](#)

The National Center for State Courts Library is the world's leading collection of resources related to the field of judicial administration. Many of these judicial administration titles cover a wide range of traffic issues from impaired driving to the collection of traffic fines. The NCSC Library has compiled a Comprehensive List of Library Materials on Traffic Issues as an easy-to-use, ready reference for all traffic resources located in the library. Many of the titles listed are available electronically, and for those that are not, please contact Joan Cochet, NCSC Library Resource Manager, at jcochet@ncsc.org or call 757-259-1826 for check-out information. For more information on the traffic resources available through the NCSC Library, a short 20 minute webinar is available at <http://home.trafficresourcecenter.org/Hot-Topics/Traffic-Resources-Webinar.aspx>



UPCOMING PROGRAMS OF INTEREST:



August 27

Complimentary Webinar: Impaired Driving Risk Assessment: Reducing Recidivism

Judge Phyllis McMillen, Helen Harberts, faculty; Judge Earl Penrod, Moderator

This course qualifies for CLE credit.

Course description and registration information is available at ; look at the tab titled "meetings and programs"

July 24



Webcast: Ignition Interlocks: Status Update

Erin Holmes, Traffic Injury Research Foundation, Faculty

October 6-9

Traffic Issues in the 21st Century

Judge Neil Axel, Judge Earl Penrod, Jane Pfeifer, Officer Karl Nieberlein, faculty

Scholarship assistance is available. The course qualifies for scholarship assistance.

For course descriptions and registration information on courses offered by the National Judicial more see: <http://www.judges.org/>

August 13 – September 1 Drive Sober or Get Pulled Over



CONTACT INFO continued

State Judicial Outreach Liaisons:

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