

# Underage Drinking Enforcement Training Center

## Monthly Resource Alert

### October 2008



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Please visit our enhanced website at [www.udetc.org](http://www.udetc.org) for the latest information on underage drinking.

#### The 10<sup>th</sup> Annual National Leadership Conference

The 10th Anniversary National Leadership Conference (NLC) was held on August 20-23, 2008, at the Gaylord Opryland Resort & Convention Center in Nashville, Tennessee. The NLC theme was "A Notable History: Forging the Future." More than 2,200 participants (a record number) attended the conference. Attendees included representatives from the U.S. territories: American Samoa, Guam, Northern Marianas Islands, Puerto Rico, and the U.S. Virgin Islands. Additionally, more than 351 youth representing 36 States attended.

The 11<sup>th</sup> annual NLC date and location will be announced in the November *Resource Alert*, so watch for this information so you can plan early to join us!

#### Study Shows Underage Drinking Rates Remain Steady

The recently released 2007 National Survey on Drug Use and Health, conducted by SAMHSA's Office of Applied Studies, found that, nationwide, the overall prevalence of alcohol use and binge drinking and underage drinking in 2007 was nearly the same as in 2006. The survey also found that 23.3 percent of Americans aged 12 and older had engaged in binge drinking within the past month, and 15.7 percent of youths aged 12 to 17 were current drinkers.

#### New Updates on APIS Now Available

The Alcohol Policy Information System (APIS), a project by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), has completed its latest update of State-by-State alcohol policies. The updates to the system, found at <http://www.alcoholpolicy.niaaa.nih.gov/>, cover the period of 1/2/2007 through 1/1/2008.

APIS is an online resource that provides detailed information on selected alcohol-related policies across the United States. Many of the newest changes are consistent with the goal of reducing underage drinking and its consequences.

#### Did you Know...?

That there is a new drinking game known as "Wizard Stick"? This game gives "wizard status" to anyone who consumes enough cans of beer to exceed their height. Eventually, the beer cans stack up and form a walking stick, which is carried around for the night. The game is popular with the demographic group most likely to binge drink and suffer harmful consequences—males aged 19 to 29.

#### October 2008 Resource Alert Legal Case

##### Case Descriptor

#### "The Court of Appeals of Indiana Reviews the Law on Contributing to the Delinquency of a Minor"

In May of 2008, the Court of Appeals of Indiana rendered its opinion in the case of *Hostetler (Appellant-Defendant), v. State of Indiana (Appellee-Plaintiff)* No. 44A05-0712-CR-730 (2008).

Appellant-Defendant Marlin Hostetler appealed his conviction in the LaGrange Circuit Court of Ind. Code § 35-46-1-8 (2006), Contributing to the Delinquency of a Minor, a Class A misdemeanor, for which he received a suspended sentence of 60 days in jail.

To learn more about this case and the important issues raised Defendant-Appellant for law enforcement, please click on the link below:

[www.udetc.org/documents/ResourceAlerts/October2008Case.pdf](http://www.udetc.org/documents/ResourceAlerts/October2008Case.pdf)

#### October National Electronic Seminar

##### Cyberspace: What's out there for our youth?

Date: Thursday, October 23, 2008

Time: 3:00-4:15 p.m. EDT

Law enforcement and communities have worked tirelessly to address the commercial and social availability of alcohol available to our youth. But today, alcohol is available commercially from retailers who are not necessarily across the street but across the country. Social availability and parties are not limited to word of mouth or a sign posted on a telephone pole.

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\*Visit [www.udetc.org/audioconfregistration.asp](http://www.udetc.org/audioconfregistration.asp) to register.\*

To print a hard-copy of this month's Resource Alert visit: [www.udetc.org/documents/ResourceAlerts/ResourceAlert1008.pdf](http://www.udetc.org/documents/ResourceAlerts/ResourceAlert1008.pdf)

*The views expressed in this publication do not necessarily represent the views of the Office of Juvenile Justice for Delinquency Prevention (OJJDP) or the Underage Drinking Enforcement Training Center (UDETC) and are solely of the author/source.*

## October 2008 Resource Alert Legal Case

### Issues on Appeal

(1) Whether there was sufficient evidence to support his conviction arguing that the State failed to prove that he aided, induced, or caused I.L. (*initials used by the Court to protect the identity of the juvenile*) to consume alcohol or that he knew I.L. was under age eighteen.

### The Facts of the Case

On July 22, 2006, Hostetler held a party at his residence, 7590 South 400 West, near Topeka, Indiana. Hostetler, who was approximately twenty-five years old, lived at this address with his parents and siblings, one of whom was his twenty-four-year-old brother. Hostetler's parents were out of town at the time of the party.

Hostetler invited approximately twelve people to the party, and his brother also invited several people. All of these invited guests were over twenty-one years old. Hostetler was aware that additional people, some of whom were under twenty-one years of age, also came to the party. Approximately fifty to two hundred people were present at the party. Hostetler and others drank alcohol at the party. Other attendees drank the non-alcoholic drinks of Pepsi and Red Bull.

I.L., who was seventeen years old at the time, was an underage attendee at the party. Her boyfriend, Sam Brill, was also at the party. Brill, who had brought alcohol to the party which he kept in a cooler in his truck, provided I.L. with alcohol by sharing his drink with her and by inviting her to help herself from his cooler.

I.L.'s contact with Hostetler during the party involved seeing him there. I.L. was unsure whether she had talked to Hostetler. Hostetler knew that certain people at the party, including I.L., were not twenty-one years old, but he did not ask them to leave. Hostetler claimed that he did not furnish anyone with alcohol, nor did he see anyone under age twenty-one drinking alcohol.

At approximately 6 a.m. on the morning of July 22, 2006, LaGrange County Sheriff's Deputy Randolph Mellinger arrived at Hostetler's residence to find approximately twenty vehicles in the driveway and approximately fifty people sleeping inside the vehicles. Deputy Mellinger additionally noticed beer cans and wine cooler and liquor bottles lying in the yard. I.L. was arrested and tested positive for alcohol.

On August 4, 2006, the State charged Hostetler with contributing to the delinquency of a minor for aiding, inducing, and causing I.L. to commit the delinquent act of consuming alcohol. Following a bench trial, the trial court found Hostetler guilty as charged and sentenced him to sixty days, all suspended, in the LaGrange County Jail.

## Analysis of the Court

The Court began their analysis by restating their standard of review based upon a claim of insufficient evidence. “We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. “We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* Reasonable doubt is a doubt which arises from the evidence, the lack of evidence, or a conflict in the evidence. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998). A conviction may be sustained on circumstantial evidence if such evidence supports a reasonable inference of guilt. *Rush v. State*, 881 N.E.2d 46, 53-54 (Ind. Ct. App. 2008).

The Court restated that Indiana Code section 35-46-1-8 provides that a person who is at least eighteen years of age commits contributing to the delinquency of a minor if he knowingly or intentionally (*emphasis added*) encourages, aids, induces or causes a person less than eighteen years of age to commit an act of delinquency

The sole issue for the Court to review was the extent of Hostetler's responsibility for I.L.'s consumption of alcohol while she was attending his party on his property. “The State asserts that Hostetler contributed to I.L.'s delinquency merely by organizing and hosting the party where she drank alcohol, and by being aware that certain party attendees were under the age of twenty-one. The State is correct in its suggestion that a defendant need not actually hand an alcoholic beverage to a minor and request that she drink it in order to sustain a conviction for contributing to the delinquency of a minor. *See Reeves v. State*, 161 Ind.App. 240, 244, 315 N.E.2d 397, 399 (1974).”

The Court distinguished the present case from those cited earlier as controlling authority by noting “...[i]n *Reeves*, this court upheld a conviction for contributing to the delinquency of a minor where a defendant was accompanied by a minor while obtaining beer and subsequently attended a party where the minor drank in his presence. 161 Ind.App. at 241-42, 315 N.E.2d at 398.

The Court distinguished the facts in this case from *Rush*. “In the recent *Rush* case, this court similarly upheld a conviction for contributing to the delinquency of a minor where the defendant knew that her seventeen-year-old daughter was being visited by multiple peers, she was present when these visitors brought alcohol into her house, she had seen beer cans in the house, and she had spoken with her daughter and at least one of her peers after they had been drinking. 881 N.E.2d at 53. Noticeably, in both *Reeves* and *Rush*, the evidence demonstrated the defendants' knowledge of and implicit encouragement for the minors' consumption of alcohol.

Here, the record does not establish that Hostetler similarly knew of and encouraged I.L. to drink alcohol. The undisputed evidence in the record was that Hostetler did not invite I.L. to his party, that she obtained alcohol directly from Brill, not Hostetler, and that Brill brought his own alcohol and stored it in his truck. In addition, there is no evidence that I.L. drank alcohol in Hostetler's immediate presence or that he saw I.L. drink the alcohol.

Perhaps more importantly, unlike in *Reeves and Rush* where the minor's status did not appear to be at issue, here there is scant evidence demonstrating Hostetler knew that I.L. was under the age of eighteen. In a criminal prosecution, the State must prove every element of an offense, including statutorily specified ages. See *Staton v. State*, 853 N.E.2d 470, 471 (2006). The State may prove age through circumstantial evidence. *Id.* at 474. In *Staton*, the Indiana Supreme Court concluded that there was sufficient evidence that the defendant was eighteen based upon the fifteen-year-old victim's testimony that she "understood" that he was at least eighteen at the time of the offense and "imagined" he was four years older than she. *Id.* at 474-75. Here, in contrast, the only evidence that Hostetler knew I.L.'s age was her testimony that she and Hostetler had known each other for "probably" three years and his testimony that he knew I.L. was under age twenty-one. *Tr. p. 22.*

Hostetler's knowledge that I.L. was under age twenty-one, even coupled with I.L.'s estimate regarding the length of their acquaintance, does not establish that Hostetler knew I.L. was under age eighteen at the time of the party. While Hostetler's decision to hold a large party and permit the unfettered consumption of alcohol on his premises without determining the age of each attendee is clearly irresponsible and reflects bad judgment, the evidence in this case is not sufficient to convict him of contributing to the delinquency of a minor." The Court of Appeals reversed the judgment of the trial court and the cause was remanded back with instructions to vacate Hostetler's conviction.



# Enforcing Underage Drinking Laws Program

## AUDIO CONFERENCE

### TOPIC

#### ***Cyberspace: What's out there for our youth?***

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As our society becomes more dependent on the information available from the cyber world, we need to remain ever vigilant to the trends, services, and laws related to the sale of alcohol online and the social networking community that can turn a rumor of a party into a 200-person event in an hour. Our presenters will discuss the legal issues related to commercial sale of alcohol to minors using the Internet and what tools and resources are available to law enforcement to combat this increasingly popular cyber offering. Our panel will also discuss the ins and outs of the social networking scene. How does it work, how can it be monitored, and by whom.



**DATE** Thursday, October 23, 2008

**TIME** 3:00–4:15 p.m. EDT

### PRESENTERS

**Presenter 1:**  
**Lt. Corey MacDonald, Esq.**  
*Portsmouth NH Police Department*  
[macdonaldc@pd.cityofportsmouth.com](mailto:macdonaldc@pd.cityofportsmouth.com)

**Presenter 2:**  
**Sheriff Chad Leonard**  
*Dallas County Sheriff's Office*  
[dcsheff@co.dallas.tx.us](mailto:dcsheff@co.dallas.tx.us)

**Presenter 3:**  
**Steven L. Schmidt**  
*National Alcohol Beverage Control Association*  
[sschmidt@nabca.org](mailto:sschmidt@nabca.org)



*Internet users will be able to log on to our conference web page to view presentation slides and interact with other participants.*

### REGISTER

Please register by using one of our automated options:

- **To register on our website**, please visit [www.udetc.org](http://www.udetc.org) and complete the online registration form, or
- **To register by phone**, please call our toll-free number, 1-877-335-1287, extension 230, and follow the prompts.

**Telephone dial-in instructions and accompanying materials for the audio conference will be mailed one (1) week before the call.**



# National Electronic Seminars Enforcing Underage Drinking Laws Program

The OJJDP Audio-TELECONFERENCE Series

**September 25, 2008 3:00 – 4:15 p.m. Eastern Time**  
***Alcohol and the Developing Brain: Effects of alcohol on pre-adolescent and adolescent brain development***

One of the many compelling arguments for greater parent, educator and societal concern about the prevention of underage drinking is the damage that early onset drinking can do in impairing the development of the pre-adolescent and adolescent brain. Emerging research suggests that different portions of the adolescent brain and its neurotransmitter systems are affected negatively by alcohol with both short and long term consequences. These impacts range from damage to the brain centers for thinking, planning and learning, to changes in the structures of the brain that mediate pleasure and predispose youth to depression, addiction or alcoholism later on.

We hope to make the complex topic of brain science a bit easier to understand and consider ways communities can use this information to reverse the idea that alcohol is simply a "rite of passage".

**October 23, 2008 3:00 – 4:15 p.m. Eastern Time**  
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**November 20, 2008 3:00 – 4:15 p.m. Eastern Time**  
***Sustaining Success***

Sustaining success is the lifeblood of a community coalition - but how is it done? What are the necessary steps needed to sustain success but also sustain the community coalition in general? Learn how sustainability is not just about funding but includes other strategies that are crucial to sustain your community coalition's efforts toward success in reducing underage drinking.

**December 18, 2008 3:00 – 4:15 p.m. Eastern Time**  
***Challenges and Successes of Rural Law Enforcement***

Enforcement of underage drinking laws is a battle fraught with many challenges that may seem overwhelming at times, especially in rural settings where underage drinking may be readily accepted as a harmless "rite of passage"; and man power and other resources to address these challenges are limited. Learn how various jurisdictions across the country have innovatively overcome rural enforcement challenges and leveraged local, state, and federal resources to successfully address adult provider and youth alcohol access and consumption issues, thereby changing community norms and rural enforcement practices.

**For audio-conference registration information, please visit [www.udetc.org](http://www.udetc.org)**

All programs provide opportunities for presentation, discussion, and sharing information. Telephone dial-in instructions and accompanying materials will be mailed to registrants two weeks before the audio conference.

To register for any of these free electronic seminars by phone, call toll-free 1-877-335-1287 extension 230