



# IACP DRE TAP Meeting

October 16, 2020

Virtual On-Line Meeting

## TAP members in attendance:

Beth Barnes	Kyle Clark*	Jennifer Harmon	Clint Schrum
Paul Batcheller	Don Decker	Mike Iwai	D'Arcy Smith
David Beatty	Charlie Files	Cecelia Marquart	Gary Tamkin
Daven Byrd	Glenn Glaser	John Marshall*	Robert Ticer
Karl Citek	Mike Hanson	Matt Myers	Helena Williams

\* *Ex-officio members*

**Members unable to attend:** Darrell Edmonds

## IACP/NHTSA Staff in Attendance:

Joe Abrusci	Chuck Hayes	Christine Frank	Keith Williams
Jim Maisano	Bill O'Leary		

## Guests:

Mark Ashby	Sam Criswell	Don Marose	Vin Petty
Ken Benfield	Duane Ellis	Ty Milless	Robert Richardson
David Botham	Geoffrey Hossack	Todd Olmstead	Matthew Slater
Michael Bute	Carol Jolly	Robert Paul	Joanne Thomka
Nicole Cofer	Robert Klin		

## Welcome and Introductions:

Kyle Clark welcomed everyone on-line and explained the workings of the RingCentral platform for the attendees to be able to interact with the others to ensure a productive virtual meeting.

Chair Ticer called the meeting to order at 11:02 AM (EST) and welcomed the attendees. Chair Ticer had each attendee introduce themselves. He thanked the members and expressed his appreciation of the work each was doing in the efforts against impaired driving. He then reviewed the TAP mission, responsibilities, and goals. He also thanked the IACP DEC Program staff for organizing the virtual meeting and expressed his hope that the next meeting could be conducted in-person. As part of the introductions, he welcomed the newest TAP members, which included Charles Files, the Central Region TAP representative; Michael Hanson representing the Highway Safety Offices; and Dr. Gary Tamkin, the medical representative.

**Review and Approval of TAP Mid-Year Meeting Minutes:** Chair Ticer requested that the minutes from the 2020 TAP Mid-Year virtual meeting be considered for approval and requested a motion to approve them. There was no discussion regarding any needed revisions and the minutes were approved by a virtual vote.

**IACP Updates:** Kyle Clark provided updates on the following IACP activities:

- **2020 DAID Conference:** The 2020 DAID Conference was the first-ever virtual conference and was held virtually due to COVID-19. There were 1,251 registrations and over 900 attended the live sessions. He reminded everyone that all the recorded sessions are online and available for 6 months following the conference and available to registered attendees through February 2021. Even though the conference was not an in-person event, the ability to view more training sessions was a plus for the virtual format. He mentioned that one of the most well received presentations was the plenary session by Dr. Citek.
- **Future DAID Conferences:** The 2021 DAID Conference is scheduled to be held at the Omni Resort ChampionsGate just outside of Orlando, FL. The dates are scheduled for August 14-16, 2021. The Call for Presentations will be open November 19, 2020 through January 13, 2021. IACP is currently working on dates and locations for future DAID conferences and will maintain the same rotation between the regions. With the rotation, the 2022 conference will be held in the western region, and the 2023 conference in the central region.
- **IACP ARIDE/DRE Training Funding:** IACP is continuing to process Drug Impaired Driving Enforcement Training (DIDET) contracts – five have been approved and two more are pending approval. The application process and reporting was streamlined to make it an easier process. DIDET funding information is available on the DEC Program webpage or at: [www.theIACP.org/DIDET](http://www.theIACP.org/DIDET).
- **Credentialling Updates:** The IACP has transitioned to a new printed card and they are being sent to the DRE state coordinators for distribution. All credentialing data is up to date and each state is being updated each month or sooner. Requests for DRE numbers for new DRE students will continue to be a priority to get them to the state coordinators.
- **Best Practices Guide:** In June, the IACP completed and distributed the *Best Practices Guide: Managing Effective Drug Evaluation and Classification Programs*. This is a tool for state coordinators and others to use and provides some fundamental practices from across the country to help enhance state DRE programs. The Guide will be mailed out to any new state coordinators coming onboard in the future.

**NHTSA Updates:** Director John Marshall expressed positive comments for the work that TAP does and provided an update on the 2019 FARS report. The report data shows in 2017-2018, there was a 2.4 percent decrease in fatal crashes compared to a 0.9 percent decrease in 2016. The decrease is good news, however, Director Marshall pointed out, 36,096 lives were still lost in 2019. He also mentioned that for the 1<sup>st</sup> half of 2020, compared to last year, the fatality rate is increasing and there is a 2020 estimate of just over 19,000 deaths. Initial crash research shows speeding was more prevalent and there was an increase in ejection rates, suggesting a decrease in seat belt use. There is also additional evidence of increased alcohol and drug use, and the survey indicates many drivers are using more alcohol and drugs to cope with COVID-19 issues. The report also mentions increases in poly drug usage. The survey ultimately showed that those people who were out of their households were the higher risk takers and would use higher speeds, drive while impaired, and not use seatbelts.

Additional updates from NHTSA included:

- **National DRE Data System (NDDS):** Christine Frank provided an update on the NDDS and reported the DRE state coordinators should have received an email regarding a correction made to the accuracy calculations in the system. There are other changes being incorporated to the system, including the

ability to add the rebound dilation pupil size ranges. She reported there are 8,750 active users of the system.

- Curricula Updates and Dry Lab Videos: Christine Frank provided an update on the curricula work and thanked the curricula team for their efforts. Most of the recent work has been conducted online due to COVID-19 in-person work restrictions. She also thanked the TAP Scientific workgroup (WG) for reviewing items sent to them from the Curricula WG. She reported NHTSA is contracting with providers to work on an ARIDE Refresher Course and a DRE Testimony Course. The ARIDE Refresher will probably be a 4-hour online training course. The development of this training is based on feedback from numerous sources and is also helpful when satisfying state overtime requirements. The DRE Testimony training may also be an online format. She reported the next project will likely be an update of the SFST dry lab videos, and a memorandum of understanding is in place with South Carolina to work on these. This will be a big project and will benefit to the SFST program.
- Drug Fact Sheets Updates: Bill O'Leary provided an update on the Human Performance and Drug Fact Sheets. They are in review and the final edit process. No release date has been set yet and the COVID issues have slowed things down. However, the project is moving forward, and a 2021 release is anticipated.

Bill also expressed his optimism that today's meeting will deliver a clear message for the use of virtual training as part of the SFST curricula and possibly in other training, with the goal of having all states on the same page.

Keith Williams recognized both Bill and Christine for their awards received during the DAID Conference. He also reported Bill will be receiving the "Silver Medal Award" which is a special recognition and the 2<sup>nd</sup> highest award that the DOT gives out. Keith indicated this is a great honor for Bill in recognizing the work he has done with the DEC Program and other impaired driving programs, and his work and partnerships with the IACP and TAP.

New Impaired Driving Research: Nothing to report.

## **Old Business:**

### DEC Program International Standards Revisions/Updates:

- Combined Standards (DRE/SFST/ARIDE) – Jim Maisano provided an update on the combined standards for DRE, ARIDE and SFST. All three standards were combined into one document to make it easier for reference when needed and is a way to keep things consistent. The new format was provided in the TAP Notebook for review. After reviewing the combined standards, Chair Ticer asked for motion to approve them. A motion was made and carried to approve the new combined format.
- Instructor Observed Evaluations - Assistant Chief Helena Williams expressed the need for a review of the standards regarding instructor observed DRE recertification evaluations to consider allowing for a virtual instructor observed DRE evaluation. She expressed that there are several other disciplines, including medical, that are using virtual training formats. She also gave the example of parts of Canada being allowed to use simulated actor evaluations for certification. This proposal prompted a great deal of discussion among the members and guests. Following the discussion, and after receiving feedback from prosecutors in attendance, Chair Ticer tabled the item until a consensus could be reached on this proposed change. **(Action Item)**

- Condensed SFST/DRE IDC with State's Basic Instructor Development Course - Jim Maisano reported this issue was identified while working with the Curriculum WG. There is an established DRE Condensed Instructor Development Course (IDC) which reduces the redundancy of learning sessions when a participant has already completed the full SFST course. Further, many of the same topics covered in the SFST IDC are also covered in many state's Basic Instructor Development (BID) course. Arizona requested to use a Condensed IDC for SFST Instructor since all Arizona officers must first complete their state's Basic BID course. Arizona identified redundant topics covered in their state's BID that were also present in the full SFST IDC. The Curricula Workgroup reviewed the request and developed a form all states could use to attest to the equivalency of their state BID and demonstrate eligibility for a condensed SFST IDC. A motion was made to approve the request and the motion carried.
- Enhanced State DEC Program Standards – Jim reported there were no new enhanced standards to report. State coordinators were reminded they still need to report any enhanced standards, whether new, or revised, or rollovers without changes in January of each year. A reminder will be sent to the state coordinators and they will be reported on at the TAP mid-year meeting. **(Action Item)**

SFST/ARIDE/DRE Curriculum Updates – Don Decker reported the Curriculum WG has not been able to meet in person due to the continued COVID restrictions and have been conducting virtual meetings. Work continues with updating content and resources. SFST is nearly complete and the primary work is now focused on DRE and ARIDE. The Curricula Workgroup is reviewing the possibility of adding a box or comment area on the DRE facesheet regarding current or previous mental health issues. Once the revisions and updates are complete, pilot testing of the courses will be conducted. Chuck reminded everyone the three main resources relied upon for the curricula are: 1) The Human Performance and Drug Fact Sheets, 2) The Drug Identification Bible, and 3) The Disposition of Toxic Drugs and Chemicals in Man by Randall C. Baselt. Chuck also advised that the Curriculum WG is exploring adding more information into the Cannabis and Polydrug sessions since both areas are of major concern and importance.

LOC/Equal Tracking Curriculum Updates – Matt Myers reported that there was a question about the language in the training regarding the number of checks to be made for Lack of Convergence (LOC) during the eye exams. After review, the Scientific WG noted it should be checked twice like with other tests. The Scientific WG also provided clarification regarding the speed by which equal tracking is checked. The 2018 curriculum did not reflect any changes to the speed, but clarified different interpretations of the manual. The Scientific WG drafted some language and sent it to the Curriculum WG where it was adopted. Matt Myers also addressed the issue of subject head movement during HGN testing. There was instructions in the monograph of *HGN and the Law* that allowed for a person to place their hands on the sides of their face if the person is having difficulty holding their head still during the HGN test. The proposed language would provide officers a safe method when a person is having difficulty holding their head still, by having the subject rest the palms of their hands – on the sides of their face to assist in keeping their head stationary. There was also a review of language concerning cannabis overdose, which may need to be expanded to indicate chronic cannabis use can cause other medical issues and could result in death. It was suggested the recent identified resource and language be added to the curriculum. Suggestions were also proposed to expand the curriculum about questions the DRE may ask during an evaluation, such as history of drug use, drug use patterns, and other relevant questions. These recommendations were forwarded to the Curricula WG for consideration.

Scientific Workgroup Literature Review – Matt Myers thanked the workgroup for their work and reviewing articles. He welcomed Dr. Gary Tamkin as newest TAP and workgroup member. The workgroup reviewed an article from the AHA on Medical Marijuana, Recreational Marijuana and Cardiovascular Health as well

as an article regarding Cannabis Hyperemesis and Overdoses. The articles will be kept as part of the workgroup documents. Both articles have reference and supportive information for the DEC Program but do not prompt any changes to the curricula.

University of California San Diego Cannabis Study Update – Helena Williams reported the first part of the study has been completed but has yet to be published. The California Highway Patrol has the funding for using a driving simulator with cannabis use, which will be the next part of the study. Another funded project is the use of cannabis edibles and driving. COVID-19 has slowed the project down and hopefully once things improve, the research and testing will continue. **(Action Item)**

Arizona DRE Research Update – No report provided or available.

DRE Field Certification Training Updates – Each of the three IACP Regional project managers provided an update on the DRE field certification activities in their areas. Joe Abrusci provided an update for the Eastern Region, where some sites are starting to re-open. He has put together a worksheet of information for the Jacksonville, Florida site for those interested in using that facility. He reported on a new site that opened in Philadelphia, and he reported New Jersey is trying to work through some barriers and may start operations again for use by outside states.

Jim Maisano reported that in the Central Region, he is hoping to visit Houston, Texas, or Harris County with the hopes of establishing something in that area. He reported that Cook County, Illinois received a DIDET contract and is planning to use the local county jail for DRE field certifications. If that proves to be successful, he will explore the possibility of using that facility for some future certification training.

Chuck Hayes reported that in the Western Region, the Maricopa County Sheriff's Office is still in the process of moving from the old 4<sup>th</sup> Avenue jail to their new facility. However, COVID-19 has slowed the process. He reported the Washoe County jail in Reno, Nevada is a productive site for smaller groups of students. The California Highway Patrol Sacramento sites are still closed due to COVID issues, but hopefully they will become available for future training in 2021.

Bill O'Leary asked about the cost for using the fee-charging sites and who is receiving the payments. Both Jacksonville and Philadelphia charge a fee for their facility use. States are working directly with the facility managers regarding the payment. George Chwe, one of the Arizona DRE state coordinators, commented on the Arizona site. With the Maricopa County Jail being closed, he is using the Mesa, Arizona PD intake facility for DRE certifications. Currently it is only for local agency certification use, but it may be a possible venue in the future for smaller groups of students.

TAP Talk – Kyle Clark reported on the progress of the new resource currently named "TAP Talk". IACP is preparing to email a monthly briefing to all current emails of DREs in the IACP records. IACP staff has developed a draft list of topics for the first year. Each publication will be a short message from TAP to the line level DRE on various TAP activities and projects. The proposed monthly topics were listed in the TAP Notebook.

Virtual Training – Don Decker and Chuck Hayes provided an update on the Curriculum WG work on trying to identify possible training sessions in the SFST curricula that could be completed on-line or virtually. After discussion among the members, Chair Ticer recommended moving the concept back to the Curriculum WG and possibly have a future special meeting to identify content to be reviewed and drafted for future approval. **(Action Item)**

## **New Business:**

TAP Appointments/Vacancies: Kyle Clark reviewed the TAP appointments which will be expiring at the end of the year. Any current member seeking reappointment must submit a request for reappointment. Announcements on the positions have been posted in various locations seeking interest from other qualified persons who meet the criteria. The position up for appointment/reappointment are:

- Western and Eastern Region Representatives
- International
- POST Academy
- DEC Program State Coordinator

Persons interested in appointment should send a list of their qualifications for the position to Kyle as the IACP TAP Liaison at [clark@theiacp.org](mailto:clark@theiacp.org). A letter of support from their highway safety office is preferred. The deadline for applying is November 13, 2020. **(Action Item)**

Higher Logic Community: Jim Maisano reported on the DRE Section Community and the work on setting up a Higher Logic community for TAP. This will be a secure site, housed within the IACP network. If not an IACP member, each TAP member will have an access account setup to allow access to the site. The site will have a discussion area, announcement area, and resource library. There are also plans to have a sub-group for each of the TAP workgroups. Users can setup their account for live notifications or for a daily digest. A welcome email describing the site will go out soon with the site planned to go live October 30, 2020.

Maryland Standard Waiver (Standard 1.12) - Jim Maisano reported on a waiver being requested from TAP to International Standard 1.12, which addresses when the DRE Certification Knowledge Examination (CKE) can be taken. Maryland requested consideration for a waiver to allow this to be done before field certification training in case they could not immediately travel for the training due to COVID-19 issues. After some discussion, TAP did not support the waiver. IACP will notify Maryland of the decision.

## **TAP Member Reports:**

Police Administrator: Helena Williams provided information on the impact on California DREs falling into expired status due to COVID-19 training restrictions. However, the CHP is starting to rollout recertification training and, thus far, over 400 DREs have been recertified. However, approximately 700 DREs have expired and need recertification. California is planning some DRE schools after the first of the year and are looking at ways for conducting a safe certification process. All DREs within the California Highway Patrol (CHP) have been issued tablets and are using CHP software, which thus far, appears to be working well. California is looking at getting tablets out to other agencies and allowing them access to the in-state data system. Thus far, the in-state system appears to be able to interface with the National DRE Data System (NDDS). She also reported that due to the civil unrest and protests, many traffic officers have had to work different assignments.

### At-Large DRE:

Mike Iwai reported that between the protests, riots, and wildfires, many Oregon officers have been pulled away from their traffic safety efforts. Some of the impaired driving challenges deal with conducting DUI blood draws. Some facilities are wanting a search warrant before they will draw any blood. Some facilities are also not wanting to share pre-drawn blood from a suspect, making it more challenging for the investigating officers. Mike inquired if the newly appointed medical representative on TAP might be able to provide some future guidance regarding hospitals and the HIPPA issues

concerning blood draws. He reported on MADD's "Saturation Saturday" events and how he had organized an event in Oregon with positive results.

Paul Batcheller from Iowa reported that some of the states are still having issues trying to conduct training due to COVID-19 with many training events being cancelled or postponed.

Matt Myers reported on being contacted by several companies wanting to develop and test various impaired driving detection devices. Some of these businesses have reached out to other states wanting to interact with their DREs. He expressed that if anyone has information on these various devices and their use in courts, he would be interested in learning more about them. Some companies are looking into roadside devices while others are looking at jail or detention site devices. He reported on one company that was planning to attend a DRE field certification and hoping to test their devices with DREs.

Highway Safety Office: Michael Hanson from the Minnesota Office of Highway Safety reported COVID-19 has impacted the enforcement of DUI in Minnesota and probably many other states as well. In Minnesota, many bars and restaurants are shut down due to local gathering restrictions. However, officers are still making DUI arrests despite the closures, including more daytime arrests. He also reported Minnesota officers are also seeing an increase in drug impaired drivers.

International: D'Arcy Smith reported Canada is waiting on statistics to see how COVID-19 impacted impaired driving enforcement and crashes nationally. There was an uptick in arrests for 2019. The RCMP is looking to see what has happened in the country since the cannabis legalization took effect. He advised Israel and Brazil have contacted the RCMP for basic information about how Canada conducts impairment training and enforcement. He will keep the IACP and TAP updated on any further discussions with those countries.

#### Medical/Optometry:

Dr. Gary Tamkin expressed his pleasure in being part of the TAP. He shared what medical is seeing in drug use since COVID-19 and how the pandemic has changed the use of drugs. He reported drug overdose deaths are up about 15 percent and alcohol use appears to be up about 30 percent. He also reported that due to changes in social situations, there appears to be an increase in narcotic overdoses nationally. Isolation types of drug use, which includes alcohol, benzodiazepines and cannabis, appears to be on the increase while more social drugs such as ketamine, LSD, and MDMA use appears to be on the decrease. He further reported current overdoses are typically sole users, due to a decrease in social situations during COVID-19.

Dr. Citek had no new information to report.

NHTSA: John Marshall discussed the challenging times for everyone and especially for law enforcement. On behalf of Bill O'Leary, Christine Frank, Keith Williams, and all of NHTSA, John thanked everyone for their continuing efforts in deterring impaired driving and saving lives on the roadways.

Police Training: Darrell Edmonds was unable to attend the meeting and no report was provided.

POST: David Beatty reported many states shut down their police training starting in March due to the COVID-19 issues. Some police academies are starting soft openings and beginning to conduct some forms of training. He reported Oregon has now fully opened their academy with some limitations. He reported an area with the SFST training that is being affected is conducting wet labs. He mentioned the importance

of using monitors to enforce social distancing of the drinkers and the need for other protections when conducting wet alcohol workshop labs.

Prosecutor: Beth Barnes reported many of the court systems are still being impacted by COVID-19. This includes the number of people who are allowed into the court room. Due to internet connections issues, Beth provided an update in writing on some DRE related court cases. The report included:

- New Jersey – *State v Olenowski*. This *Frye* hearing challenging DRE remains at the pre-trial/pre-hearing stage. The Special Master has ordered volumes of discovery which is being provided. Periodic status conferences continue. The New Jersey prosecution team is building its case.
- Pennsylvania – *Commonwealth v. Gallup*. On June 3, 2020, a Berks County, Pennsylvania trial judge entered an order granting a defendant’s pretrial motion to exclude DRE testimony. The court concluded that while the Commonwealth had established the DRE program is now generally accepted within the law enforcement community, they had not met the burden of establishing the HGN test and DRE protocol are generally accepted in the scientific community. In Pennsylvania, DREs have been permitted to testify in some capacity in the area of drug impairment in 39 out of 67 counties. It was agreed this was not the proper case to take up for a definitive ruling, so the DA chose not to appeal. Because this is merely a trial court ruling, it should not have any precedential value.
- Washington - *Seattle v. Levesque*. The Washington Supreme Court denied review in this case. (As reported at the last meeting, the Washington State appellate court ruled because the officer was not a DRE and lacked other sufficient training, he was ruled a lay witness and not qualified to testify to the opinion that Levesque exhibited signs and symptoms consistent with a CNS stimulant. Also, an officer may not testify to the opinion that a DUI suspect “is definitely impaired” because it goes to the ultimate issue in the case which is for the jury to decide.)
- Wyoming – *US v. Engle*. DUI drug case. The trial judge ruled DRE testimony does not require a *Daubert* analysis and treated the DRE officer testimony as admissible expert testimony and found the defendant guilty. Since the last meeting, the case was appealed and upheld. It appears this case may be headed for the 10<sup>th</sup> Circuit.
- Colorado - *People v. Marston*. The Colorado Court of Appeals held a trial court may admit HGN evidence without holding a *Shreck* hearing (Colorado’s version of *Daubert/Frye*) if the HGN evidence is only offered as evidence of impairment; not to demonstrate a specific BAC. The opinion noted virtually every trial judge in Colorado already takes judicial notice of the scientific principles underlying HGN testimony and the weight of judicial authority, both in local trial courts and case law from other states, favors the admissibility of HGN.

Regional Coordinators:

Western Region – Daven Byrd had to leave the meeting early due to another obligation and the report was provided by Chuck Hayes. The 2021 Western Region DRE state coordinator meeting is planned for May 26th in Laramie, Wyoming in conjunction with the Wyoming Impaired Driving Conference being coordinated by Sergeant Duane Ellis, the Wyoming DRE state coordinator. State coordinators can attend the entire conference and no registration fee is being charged. Several states in the region were planning to conduct Operation Trucker Check events but due to wildfires and COVID-19 issues, those events had to be cancelled. Many of the western states are getting good response and interaction with the NHTSA Law Enforcement Liaisons (LEL) in the region. With the assistance of the LEL’s, additional advertising of the DIDET funding program is taking place and both ARIDE and DRE training is being strongly emphasized with the law enforcement community.

Central Region: Charlie Files had nothing to report for the Central region.

Eastern Region: Don Decker reported there are five new DRE state coordinators in the Eastern region. He reported the District of Colombia is still without a DRE coordinator. Don participated in a NHTSA Region 1 & 2 meeting along with some of the state coordinators from those two regions and it provided a good exchange of information. He reported the HGN study by Dr. Richman has not been published. When completed, it will show that the HGN rates will probably be over 90%. Don also reported he recently started collecting data and reviewing pupil size differences to be considered for rebound dilation, which might be helpful for the DRE curricula.

State Coordinator: Cecelia Marquart thanked the Central region state coordinators for their efforts and interactions with all the other state coordinators. She reported that Texas has been on a lockdown on police training, but last Thursday the state was approved to do hybrid and in-person training. With this recent change, they are preparing to begin DRE recertification training. Texas has been conducting DITEP training and have been conducting some of it virtually. She also reported the IN-SITE project will be resuming soon. Additional funding has been provided for the expansion of the project and the testing device.

Toxicology: Jennifer Harmon reported work is continuing with the 4<sup>th</sup> iteration from the National Safety Council regarding drug testing. The workgroup met this year and the publication should come out within the next year. Toxicologists continue to see a lot of the new novel drugs, especially with the synthetic benzodiazepines. She also reported some labs have seen a decrease in enforcement toxicology requests. There are concerns about law enforcement agencies applying for impaired driving grants if components are requiring events such as checkpoints. The California courts have been closed totally, so many impaired driving cases are pending, and some areas are seeing repeat offenders while waiting for current cases to be heard.

Chair Ticer thanked the members for their reports and expressed his hopes of getting together in-person for the next TAP meeting. Chair Ticer officially adjourned the meeting at 4:22 pm (EST)

Next schedule meeting: Mid-Year meeting **April 29, 2021, Seattle, WA.**