



# IACP DRE TAP Meeting

September 11, 2021 11:00 AM – 5:00 PM (EST)  
Virtual Online Meeting

## TAP 2021 Annual Meeting Minutes

### TAP members in attendance:

Beth Barnes	Sam Criswell	John Marshall *	Clint Schrum
Paul Batcheller	Charlie Files	Patrick McNichol	D'Arcy Smith
David Beatty	John Flannigan	Matt Myers	Helena Williams
Karl Citek	Jennifer Harmon	Tim Plummer	
Kyle Clark*	Mike Iwai	Brett Railey	

\*Ex-officio members

### Members unable to attend:

Darrell Edmonds	Michael Hanson	Gary Tamkin
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### IACP/NHTSA Staff in attendance:

Joe Abrusci	Chuck Hayes	Jim Maisano
Christine Frank	Nuyiri Kasbarian	Keith Williams

### Guests:

Kory Borcharding	Nicole Kofer	Grayson Smith
Jared David	Don Marose	Joanne Thomka

### WELCOME AND INTRODUCTIONS

Kyle Clark started the online meeting at 11:02 a.m. EST and welcomed everyone in attendance. He then turned the meeting over to the Chair, retired Chief of Police Brett Railey who welcomed everyone to the meeting. The Chair had a moment of silence for the victims of the 9/11 attacks, 20 years ago.

## **MISSION OF TAP/RESPONSIBILITIES AND GOALS**

Chair Railey reviewed the TAP Membership Mission/Responsibilities and Goals with the attendees.

## **ROLL CALL**

Chair Railey had Kyle Clark conduct a roll call of all TAP members to introduce themselves and to also ensure their microphones were working properly.

## **MID-YEAR MEETING MINUTES**

A copy of the 2021 TAP Mid-Year Meeting Minutes were provided in the TAP notebook. The minutes were approved. (**Action Item: Approved**)

## **IACP UPDATES**

Kyle Clark provided an update on the following items on behalf of the IACP:

2021 DAID Conference - The 2021 DAID conference was a success with both an in-person and a virtual component. This year, over 40 training sessions were offered, which is nearly 50% more than offered in 2020. All attendees will have access to the recorded workshops for three months following the conference.

Future DAID Conferences – The IACP plans to continue the current rotation for the location of future DAID conferences, which is western region, central region, and eastern region. The 2022 conference's location has not yet been finalized. IACP will publish this information as soon as the contract is finalized.

IACP ARIDE/DRE DIDET Funding – IACP is in the final nine months of the 3-year NHTSA cooperative agreement that provides funding for agencies and training organizations to deliver DRE schools and ARIDE classes. Nearly a dozen agencies have benefitted from this training to date.

Credentialing Updates - IACP staff continue to process credentialing requests within 30 days of receipt. Currently, there are no backlogs. DRE and DRE Instructor cards are being mailed to the state coordinator for dissemination to their states' DREs. As of yesterday (9/10/21), there are 7,192 DREs in the U.S. and 945 DREs in Canada.

DRE Roll Call Training Video - A new video has been produced by the IACP to be used to enhance awareness of the DEC Program and promote the use of DREs in DUID investigations. The video, entitled, "Utilization of Drug Recognition Experts" is available at the following link (<https://vimeo.com/588512390/af45741dfe>). Everyone is welcome to disseminate and share this video to enhance awareness of the use of DREs in their area. The goal is to promote the use of DREs and better inform officers of what DREs do.

## **NHTSA UPDATES**

John Marshall welcomed everyone that was in attendance. He reminded everyone that Bill O'Leary has retired and passed along that Bill is doing well and will be missed from the TAP meetings. John provided NHTSA data that traffic fatalities are on the increase. There was an average increase of about 10.5% while data shows a decrease of 2.1 % of vehicle miles travelled. Normally, that would relate to a fatality decrease, but this year, it is not. Eight of the ten NHTSA regions saw an increase in the fatality rate. This is from increased risk-taking, including speeding and impaired driving incidents. He reported seeing a report from California about the number of DUI arrests they have made during the last holiday period. The report reflects the good work that officers are still doing to try to make our roadways safer. In a recent meeting with IACP and NHTSA, it was noted that more DREs are needed.

Keith Williams expressed his appreciation for the relationship with the IACP and the many accomplishments that have been made. He reported that marijuana legalization, whether medicinal or recreational use, continues with all but seven states having some form of legalization. Marijuana and polydrug usage is up and creating issues for highway safety. He challenged those in attendance to let NHTSA know how NHTSA can help. He echoed Director Marshall's comments that more DREs are needed because it is the best tool to combat impaired driving.

National DRE Data System - Christine Frank provided an update on the National DRE Data System. The developers are still making monthly updates, driven by feedback received from the various users. They have updated the toxicology lists, charts, and the complete/incomplete reporting. State coordinators can update/correct rolling logs that were entered under the new system. The developers are working on a fix to do this for data entered under the old legacy system. The updates are intended to help the state coordinators manage their state records and programs. The most current update being rolled out will allow the user to undo only the last entry in the drawing section instead of clearing all data on that section. In October, they are looking to add a query related to a refusal to do evaluations and stops during the evaluation. Christine thinks this will be a useful tool for the state coordinators to get an overall picture of evaluation refusals and withdrawing consent in their state.

Christine also reported on the following NHTSA projects:

Online ARIDE training and DRE Courtroom Testimony Training - Both projects are continuing and the ARIDE Refresher is progressing well. They are at the point of filming SMEs to enhance the program content. The courtroom testimony training is moving along and will kick-off later in 2022 or early next year. Both the online refresher and courtroom testimony trainings are currently planned to be four hours in length.

SFST Dry Lab & Truth Is in the Eyes Videos - Filming for these videos is scheduled for next month in South Carolina. This is a long-anticipated project. Kyle Clark and Charlie Files will be assisting.

New Impaired Driving Curriculum - Delays have been caused due to travel restrictions because of COVID-19 and limitations caused by virtual meetings. The workgroup will be meeting again in October. They are working to ensure that the verbiage is the same throughout all the curricula as they make updates to the content.

New Impaired Driving Research - Research showed about a 2/3rds increase during the pandemic in drivers testing positive for drugs in their system. NHTSA is hoping to start another Roadside Survey in 2022 as well as looking at a new crash risk study to update data. Additionally, they are doing a feasibility research project with Yale University to see if there are better field sobriety tests specifically for cannabis impairment. This is at an early stage and if field tests are identified, they will move towards field validation studies. Christine is checking to see if any DREs are involved in the Yale project. **(Action Item)**

## **Old Business**

### **DEC PROGRAM INTERNATIONAL STANDARDS REVISIONS/UPDATES**

Standard 2.9 - Course Manager Needed - Helena presented the proposed language modification to Standard 2.9. The modification would require that a Course Manager be designated for each DRE class, both DRE Pre-School and the DRE 7-Day School. **(Action Item: Approved)**

Enhanced State DEC Program Standards - Helena reported that the only change since the last TAP meeting was an update made in the New Jersey enhanced standards. The modification was reviewed and there was no conflict with the standards.

### **SFST/ARIDE/DRE CURRICULA UPDATES**

Jim reported that the Lack of Smooth Pursuit (LOSP) being observed in cannabis impairment evaluations is being reported more frequently. The curricula workgroup is working with the other workgroups to determine how to proceed as more research is coming out about this.

Chuck Hayes stated that the work between the curricula workgroup and the scientific workgroup is at one of the highest levels he has ever seen. He reinforced the importance of Course Manager reports and how the feedback supplied in them helps to direct the workgroup in changes to the curriculum. MADD has been able to make some attention- getting videos. The workgroup is looking to see if there is any way to add one or more of those videos as an effective way to get the students' attention about impaired driving. The workgroup is also reviewing information related to Delta-8 and Delta-10 for inclusion in the curriculum. Chuck also thanked Beth Barnes for the updates on recent Case Law information and the workgroup will be reviewing them for inclusion in the ongoing updates.

### **DRUGS AND HUMAN PERFORMANCE FACT SHEETS UPDATES**

Chuck Hayes reported that work continues with the new Drugs and Human Performance Fact Sheets document. They are currently being reviewed by NHTSA and the hope is to have them

finalized in early 2022 or late this year. The DRE curriculum WG plans to include the new Fact Sheets to the updated curriculum as supportive additions and resources.

### **SCIENTIFIC WORKGROUP (WG) LITERATURE REVIEW**

Matt Myers reported that at the last TAP meeting in April, the Scientific WG had reviewed and reported on 17 articles and that Joe Abrusci posted them to the TAP document library. Matt had nothing else to discuss under old business. He then addressed some new articles/literature the WG had reviewed. Five new items were sent to the WG since the last meeting for their review. The first of the items discussed by Matt was regarding HGN with cannabis impairment. It has been determined that, in some cases, there are other eye movements that are not HGN as seen in drug categories that typically produce it. But, to a basic trained officer, it may appear to be or is being called HGN. There is some evidence that a Lack of Smooth Pursuit (LOSP) is commonly seen with Cannabis impairment or some other conditions. The question was then raised if 4 or more clues must be present to constitute Gaze Nystagmus. It was agreed that HGN is a battery of tests and is present from a set of clues. The Scientific WG has provided recommendations for the curriculum that if HGN is to be considered present, four or more clues of the HGN battery of tests must be observed. Matt and the Scientific WG reported there is a lack of research at this time to verify officers' observations and more research is needed. With the increase in "Green Labs," there may be opportunities to collect data on this topic. Matt reiterated that the observed behavior in this abnormal eye movement is still a sign of impairment. Regarding LOSP and HGN, Dr. Citek reported that up through the 1980s, there were some reports that cannabis only effected convergence. However, in the 1990's, as THC levels increased, anecdotal reports regarding other HGN clues with the higher THC levels were being received. Dr. Citek has reviewed eye movement videos from approximately 10 years ago and reported the videos showed LOSP movements. Dr. Citek plans to review other videos and determine if there are release waivers that allow for use and distribution. Research protocols should include a drug testing process prior to subject testing and after to ensure no other drugs are involved. The use of blood testing would be more appropriate for this type of research to be able to make informed changes to the curriculum where needed. Joe Abrusci added the importance of getting pre- and post-dosing videos of people. When discussing any possible need for adding another exception to the DRE Symptomatology Chart, Matt reminded everyone that the DRE Matrix is a guide and not a set of rules or regulations.

The second topic related to body position for checking blood pressure (legs crossed). It is recommended that they are ideal conditions but are not mandatory positions and for the most part will not impact the drug evaluation.

The third topic was regarding distance to a focal target when estimating pupil sizes. This target need only be a "few" feet away to properly estimate pupil size in the three lighting conditions. When examining and estimating pupil size, if the focal point is too close, it could cause slight pupil constriction. In the actual DRE protocol, the subject is directed to look at an object "several feet" away. In the darkroom examination, it is not always conducted in a large room.

Clarification was offered that a minimum distance of six feet was for demonstration of the accommodation reflex in the classroom only.

Fourth, a question was raised regarding Lack of Convergence (LOC) and ethnicity. This issue was recently presented to the IACP by Dr. Denise Valenti. She related that people of African heritage may have wider interpupillary distance which may impact the DRE LOC test. She cited research conducted on children in Africa showing a further “near point of convergence” (NPC) than found in a different study that examined American college students. She stated these studies were consistent with other unpublished and uncited works. However, NPC is a clinical examination that differs from LOC. Despite the testing differences, the research indicated the average near point of convergence for the studied African youth was approximately 2.69 inches from the bridge of the nose, not substantially different than the approximately (but at least) two inches from the nose used in LOC. Other limitations of applying the study data to DRE examination were also discussed. After thorough review of the literature and the corresponding instructions on use of the LOC test, the Scientific Working Group found no convincing evidence that the current LOC procedure would generate adverse effects on people of a particular race or ethnic background.

The fifth topic involved a request to the Scientific WG to review the drugs listed in the DRE curriculum. The WG came up with a proposed list of drugs to be deleted, added, or in need of additional explanation. Drugs recommended for deletion included drugs no longer in production or now under a different trade name. The recommendations do not involve a change in the DRE evaluation process and were submitted to the Curriculum WG for consideration. **(Action Item)**

#### **UNIVERSITY OF CALIFORNIA SAN DIEGO CANNABIS STUDY UPDATE**

Helena Williams reported on various California Highway Patrol (CHP) projects. She indicated COVID-19 has had an impact on how the projects and research are moving forward. One study is looking at Cannabis, in addition to 0.04 BAC, using a driving simulator. An additional study will include dosing with cannabis flower, and the dosed subjects driving using the CHP driving track at the CHP Academy. However, CHP is waiting on a law revision to allow for the impaired driving on private property. CHP has the driving pattern setup and will have a special area to do the dosing conducting a true “double-blind” testing process. They are also reaching the end of their oral fluid testing project and have about 170 samples of oral fluid and blood to compare.

#### **DRE FIELD CERTIFICATION TRAINING UPDATES**

Each of the IACP DEC Program regional project managers provided an update on the DRE field certification training sites in their respective region. Chuck Hayes reported on the Western Region and stressed that the IACP DEC Program is still looking for locations to conduct out-of-state training for those states or territories that cannot conduct the training in-state. Chuck reported that the new Maricopa County Jail in Arizona is still not available for use. Losing the old 4<sup>th</sup> Ave Jail in Phoenix has made field certification training for out-of-state groups challenging. The Mesa Police Department has stepped up and is allowing some training at their

intake center. However, there is concern about overuse of the facility. There are still two CHP sites in Sacramento, California, that are available for other states, depending on COVID-19 restrictions and availability. The Washoe County (Reno, NV) jail may remain an option, though there has been a change in the jail administration, and it is not clear yet if the out-of-state partnership will continue.

Chuck reported the IACP DEC Program is hoping more states will identify and develop in-state certification sites. IACP is working on a "Promising Practices" guide on how to develop in-state certification sites. The primary topic areas will be jail/intake centers, drug treatment facilities, and community out-reach facilities.

Jim Maisano reported the Oklahoma County Jail in Oklahoma City is currently the only location in the Central Region. With a new state coordinator coming onboard in Texas, the IACP DEC Program will be looking at that state for some possible locations. The Houston Police Department was a possible planned location, but they are in COVID-19 restrictions again.

Joe Abrusci reported the Jacksonville, Florida site is once again open from the COVID-19 shutdown and has been successfully used. A new site has been opened in the Philadelphia, Pennsylvania, area. Oral fluid testing is used at the site due to the high amount of synthetic drugs being used that are unable to be identified by urine testing devices currently on the market. Joe reported that Winston-Salem, North Carolina, is a newly opened site in the region where they are using a community outreach program for their volunteers. When used, they close-down the other services other than DRE certification, and this results in a user fee being assessed.

For additional information regarding field certification sites and/or developing additional sites, please contact the respective DEC Program Regional Project Manager.

#### **TAP TALK PUBLICATION**

Kyle reported the IACP DEC Program will continue with this monthly publication. The newsletters are distributed to nearly 9,000 DREs and have proven to be more successful than originally thought. After the last distribution, there were less than 10 recipients who have unsubscribed. DREs view this as a valuable resource and connection to the DEC Program. In the future, the DEC Program team will be seeking assistance from TAP members for new topics and authoring publications once per TAP term. These topics can include important news from each person's role on TAP and articles from members of the Curriculum, Scientific, or Standards workgroups. Other topics that are TAP and DRE-related are also welcomed. Kyle requested that article ideas be sent to Jim Maisano or Chuck Hayes. **(Action Item)**

#### **TAP COMMUNITY HIGHER LOGIC UPDATE**

Jim Maisano reported the Higher Logic Community appears to be working better. Various administrative maintenance updates have been completed on some of the members' email addresses to help ensure they are receiving discussion group posts. Jim asked if any member is

not receiving emails from the TAP Community or from their TAP working group, to contact him and the IACP will address the issue to get it resolved.

### **DRE RECONSTRUCTION AD HOC COMMITTEE**

Jim Maisano reported the ad hoc committee has established a working folder and has had three online meetings thus far looking at DRE Reconstruction. To avoid potential courtroom issues, using the term Reconstruction, a term often associated with Traffic Collision Reconstruction and some standards already established in courts relating to that discipline's testimony, the ad hoc group recommended the title of DRE Post-Incident Review. The group has added SMEs to include TSRPs and active DREs. The group has recommended starting with a Considerations document to be utilized by DREs and Prosecutors. The Considerations document will list areas of interest and importance to be reviewed before a DRE post-incident review is conducted. The goal is to have a completed document ready for the TAP mid-year meeting in April 2022.

## **New Business**

### **TAP APPOINTMENTS/VACANCIES/IACP PRINCIPLES**

TAP member terms expiring this year - Kyle reported that the Optometrist position, currently held by Dr. Citek; the Police Training position, currently held by Darrell Edmonds; the Western Region DRE-at-Large position, currently held by Lieutenant Mike Iwai; and the Eastern Region DRE-at-Large position, currently held by Sergeant Patrick McNichol, will be expiring this year on December 31st. These positions will be open for appointment or reappointment. The Highway Safety Committee Liaison position, currently held by Assistant Chief of Police Matt Myers, will also be open, however this position is selected by the chair of the Highway Safety Committee. Application letters for reappointment or from anyone requesting consideration for an open position are due November 12, 2021. **(Action Item)**

Kyle reminded the TAP members about situations they may encounter in their TAP role as a leader in the impaired driving enforcement training community.

Endorsements - On occasion, committee members may receive requests asking them to endorse a product or a certain publication. The IACP does not make endorsements of any private commercial publication or product and only official publications of the association shall bear the IACP's logo or seal.

Appearance of Impropriety - TAP members are subject matter experts in their fields, and any conflicts of interest can detract from their credibility. IACP committee members should not use their position as a means for promoting any commercial enterprise or mechanism of financial gain.

Media Interviews - Committee members may be approached as subject matter experts by members of the media for commentary, either directly or via a request from the IACP. If approached directly by a member of the media for comment on behalf of the IACP or on a position the IACP has taken, first contact the IACP for guidance ([media2@theiacp.org](mailto:media2@theiacp.org)). This

does not pertain to committee members who speak to the media on behalf of their individual agencies or organizations, or if they are offering their own personal views on a topic.

#### **CREDENTIALING UPDATE/MAILING DOCUMENTS**

Kyle reported the credentialing seems to be working well for both the IACP DEC Program and the DRE state coordinators. DRE credentialing mailings are occurring about twice a week to each state, which has sped up the paperwork process. The DRE state coordinators on the TAP were asked for feedback on the process. Tim Plummer reported they like receiving the hard copies and the timeliness of receiving the cards. Sam Criswell, the TAP State Coordinator Representative reported that state coordinators he has talked to like how quickly they get documents back. He has also had a few state coordinators ask about receiving electronic copies also.

#### **NEW TECHNOLOGY REVIEW REQUESTS**

Joe Abrusci reported there are many new vendors developing drug testing products. The IACP DEC Program team asked the DRE state coordinators to report any new devices or research being conducted or developed in their jurisdictions. In one state, a company was going directly to individual DREs to seek feedback on their device without the state coordinator's knowledge. The Scientific WG also continues to get questions about automated devices, such as blood pressure devices and infrared devices for thermometers. The WG has issued several messages that these are still not authorized for the DRE evaluation but may be used for screening purposes only. Chuck Hayes reported that several former DREs and others are conducting drug trainings that may not be consistent with the DEC Program. One example included teaching that officers could check for rebound dilation at roadside by going under the shade of a nearby tree.

#### **NATIONAL INSTITUTE OF JUSTICE (NIJ) FUNDED RTI CANNABIS IMPAIRMENT STUDY**

Matt Myers provided an overview of a recent NIJ article of concern. The article described that SFSTs commonly used for impaired driving was not effective in detecting cannabis. The research paper is titled, "*Difference in Cannabis Impairment and its Measurement Due to Route of Administration*". It is not a full research study into the SFSTs, and the authors did not disclose their full data and collection methods. It has been discovered the testers may have only been technicians given an SFST overview and no actual trained SFST officers were used. Kyle Clark added that we do not know with certainty, since the full information has not been made available, to show who did the testing. Matt expressed concern that it was published on the NIJ website. A discussion was held regarding this issue and the consensus was to share information about the background of the study with the prosecutors and the DREs, and to not make a formal position statement. **(Action Item)**

#### **UPDATED RESOLUTION ON TOXICOLOGY RECOMMENDATIONS**

Jennifer Harmon reported on a requested IACP Resolution from the National Safety Council's Alcohol, Drugs, and Impairment Division seeking support for the drug testing recommendations

as set forth in the *Recommendations for Toxicological Investigations of Drug-Impaired Driving and Motor Vehicle Fatalities- 2021*. A copy of the proposed Resolution was provided to the members in the TAP Notebook. The Chair called for a motion, which was seconded to move this forward to the IACP Board for a recommendation. **(Action Item: Approved)**

#### **FROM THE FLOOR**

D'Arcy Smith asked if, on the DRE Final Knowledge Exam (FKE), the Curriculum WG could have one true polydrug or polycategory combination for the students to review. Kyle reported that this will be forwarded to the Curriculum WG to review for the new curriculum. **(Action Item)**

#### **TAP MEMBER AND WORKGROUP REPORTS**

Police Administrator - Helena Williams reported on DRE-related operations in California where the CHP is proceeding with the online DRE tablet project. Any DRE agency can use the system and it will eventually be added to the NDDS. With cannabis funding, the CHP has expanded their field certification training sites, which could be available in the future to other states or jurisdictions. In addition, the CHP has used the cannabis funding to purchase lab equipment for cannabis testing for 12 toxicology labs in the state, hoping this will make toxicology testing more standardized in the state. Thus far, the CHP has been allocated 10.2 million dollars through the cannabis program.

#### DRE At-Large

- Western Region - Mike Iwai reminded everyone, that, when looking at a state's highway safety plans, to also consider impacts on the reduction in staffing. One of the items Oregon inserted into their plan was a lower limit Ignition Interlock Device (IID) setting. Oregon does not allow sobriety checkpoints and they are hoping to continue to build and strengthen community traffic safety partnerships.
- Central Region - Paul Batcheller reported there will be a new DRE state coordinator in Texas starting on October 1st. He also reported Iowa will be conducting a new DRE class.
- Eastern Region - Patrick McNichol reported that, in the Eastern Region, New Jersey will be starting a new DRE School. He reported on some feedback received on the DAID Conference and overall, it was good, though online attendees would have preferred interaction with the presenters following the presentations. At the DRE Section meeting, the topic of expanding the DAID Conference and changing its name may impact funding for some alcohol or impaired driving grant funds. Kyle Clark expanded on the IACP stance that they are looking at expanding the traffic safety component and IACP is aware of the concern to keep DRE in the forefront.

Highway Safety Office - Michael Hanson was unable to participate in the meeting and no report was provided.

Highway Safety Committee (HSC) - Matt Myers reported there are not a lot of new items from the HSC. They were able to meet with the National Alliance to Stop Impaired Driving earlier this year. Matt reported that this is a newly formed group to work on impaired driving issues. One of the major topics of discussion at the meeting was basic traffic enforcement and how law enforcement moves forward with the current de-emphasis on traffic enforcement.

International - D'Arcy Smith reported the RCMP just cancelled their DRE classes for the calendar year. Agencies are reluctant to send officers to the U.S. to do field certification training due to travel restriction imposed by COVID-19. They are hoping the situation improves and they can get back into doing DRE classes and recertifications. He also reported Canada is still going through the validation process for validating the finger to nose testing.

Medical/Optomety - Dr. Gary Tamkin was unable to attend the meeting and no report was provided. Dr. Karl Citek reported all the work they have been doing on the Scientific WG has been wonderful and that he appreciates being able to participate in the work. He also expressed his appreciation for the DAID Conference and being one of the presenters.

NHTSA - Director Marshall again expressed his thanks for all the work IACP and TAP does for the commitment to the DEC Program and impaired driving. He also thanked Assistant Chief Helena Williams for the work and partnership NHTSA has with California and the CHP.

Police Training - Darrell Edmonds was unable to participate in the meeting and no report was provided.

POST - David Beatty reported the COVID pandemic is once again causing issues with training classes nationally and internationally. He reported there have been some classes held in the Northwest. Idaho and Oregon were able to do an in-person impaired driving conference in April. During the Oregon conference, one presentation topic was about crossing the generational divide and how that effects training, learning, and development. He recommended TAP give this some consideration and highly recommended the speaker who presented on this at the Oregon impaired driving conference. His contact information can be obtained from David if interested.

Prosecutor - Beth Barnes reported COVID-19 has the court system backlogged. She normally conducts ten court trials each week, and they have only had 10 since COVID-19 started. Beth also provided an update on the following DRE related court cases:

New Jersey (*State v Olenowski*) – This Frye hearing challenging DRE has been pending for the past several months and is now scheduled to start September 20<sup>th</sup>. It is expected to last about 6 to 8 weeks. The defense statistician's report was disclosed in early July. The defense side was ordered to produce their defense expert reports by July 30<sup>th</sup> but did not deliver them until August 12<sup>th</sup>. When they did, the reports included almost 350 documents. The defense provided another 300 documents on September 2<sup>nd</sup>. The prosecutors are working around the clock reviewing everything and making their final preparations.

Based on the defense disclosure, the State retained an additional expert to rebut the defense experts, to which the defense objected. The judge indicated he will rule on September 20th, the first day of the hearing, whether the State gets to call the witness or not.

At the last TAP meeting, it was reported the Washington State Supreme Court held in *State v. Blake* that Washington's possession of a controlled substance statute was unconstitutional because the statute was a strict liability statute that criminalized unintentional and unknowing possession of drugs and, therefore, violated due process. As predicted by the Washington TSRP, the defense tried to use this case to get the Washington DWI statute declared unconstitutional. In *State v. Vanderburgh*, the Washington Court of Appeals held the DUI statute and Vehicular Homicide DUI statutes are strict liability offenses, but they are valid ones that are not unconstitutional.

Beth also reported on several new cases, one of which was from Nebraska (*State v. Cerros*). It was a District Court case with two *Daubert* hearings in which 3 DREs testified. In the first hearing, the trial court ruled the investigating DRE could testify to his opinion of possible marijuana impairment even though he could not complete the DRE evaluation. The case also included a *Daubert* hearing where the defense tried to exclude the DRE Reconstruction that was performed. The DRE reconstruction focused on the driving behavior and nature of the crash.

Beth also reported that in Oregon, once a person invokes Miranda, the suspect cannot be required to do any SFSTs, which may include a DRE evaluation. And, Colorado continues to have numerous hearings challenging the admissibility of SFSTs for drugs other than alcohol.

#### Regional Coordinators:

- Western Region – Tim Plummer reported on the Summary of Ballot Measure 110 recently passed in Oregon. He indicated the number of misdemeanor charges has dropped significantly. This new law allows a person cited for possessing user levels of drugs to call a treatment center to see if they need treatment. Out of over 10,000 defendants cited thus far, only three assessments were verified as being completed. He also reported that some fines have been lowered to \$40, so there is not much incentive to get into treatment. He reported that in the Western Region, they had a regional DRE state coordinators meeting in conjunction with the Wyoming Impaired Driving Conference in Laramie last May. One topic was using retired DREs for training or field certification. Two of the three NHTSA LELs attended the meeting. There is a big push for the use of DREs in CMV enforcement, so Oregon and Washington are working on DRE-involved CMV enforcement programs. Oregon will also begin working with mental health professionals and involving DREs in that area. Another topic of discussion at the regional meeting was about recruiting and retention of DREs and how to keep them involved. Oregon experienced challenges in holding DRE school because of COVID-19. Tim recommended state coordinators include an escape clause in their contracts with

hotels or other training facilities. Tim also reported on a new DRE field certification training site used in Oregon with excellent results. The Oregon DRE program partnered with a community outreach in southern Oregon and were able to complete 34 evaluations in the first day.

- Central Region – Charles Files reported on the success of the DAID Conference, with several states from the Central Region doing presentations. He reported that 2022 seems like we are moving forward to plan to get back to normal as possible. He reported New Mexico legalized cannabis, and at the last TAP meeting, he mentioned trying to make a guide for new states about legalization of cannabis. He reminded everyone to use experiences from other states that have dealt with legalization. Regarding the Best Practices Guide for Field Certifications, his state is a rural state, and his problem is getting an ample volume of evals in one specific location with all the DREs in that one location. He is willing to participate on the workgroup to address this and help provide feedback from his state and issues they have to address.
- Eastern Region – John Flannigan reported the Eastern Region has had many new state coordinators in the region. Some states had a lapse with no state coordinator in place and he has been processing recertifications from those states. He is trying to get an Eastern Region newsletter started and is working with volunteers from many of the states. Locally, he just had to cancel a DRE School due to a lack of applications, which is believed to be a result of staffing issues.

Sheriff's Offices – Clint Shrum reported due to COVID-19, Tennessee has had to cancel many ARIDE classes and a DRE school. He indicated Tennessee appears to be seeing a decrease in DRE interest from sheriff's offices. He is going to try to see if this is just a local issue or a national issue. In Tennessee, the Sheriffs are tasked with mental health transports and that has an impact on their ability to send deputies to DRE schools. Additionally, due to COVID-19, many sheriff agencies have multiple deputies out on COVID-19 related leave.

State Coordinator - Sam Criswell reported all items he wanted to address have been covered. He did express his support for the DAID Conference and TAP Talk.

Toxicology - Jennifer Harmon reported SOFT has their annual conference scheduled at the end of this month in Nashville, TN. There will be a presentation on DRE, Toxicology, and Prosecutor Collaboration. Jennifer, Beth Barnes, and Matt Myers will be the presenters. Matt is replacing Chuck Hayes who was originally going to be the presenter but had to cancel due to travel restrictions. She reported that, in the west, there is a lot of success from the funding that California is providing for toxicology testing. In terms of drug trends, the labs are seeing an increase in synthetic Benzodiazepines and continued fentanyl detection.

DRE Section - Paul Batcheller expressed his thanks to all who assisted from the DRE Section at the DAID Conference in staffing the DRE Section table and helping to increase the membership.

The meeting was adjourned at 3:30 PM EST by Chair Railey

**Next meeting:** Kyle reported that the TAP Mid-Year meeting is planned for April 21, 2022 in Orlando, FL at the Rosen Shingle Creek.

9/22/21