



# IACP DRE TAP Annual Meeting

October 15, 2022 9:00 AM – 5:00 PM (CST)

Dallas, TX

## TAP members in attendance:

Brett Railey, Chair	John Flannigan	Tim Plummer
Beth Barnes	Michael Hanson	David Roberts
Paul Batcheller	Jennifer Harmon	Jerry Sharp
David Beatty	Ron Hoague	Clint Shrum
Karl Citek	Nick Knoll	D’Arcy Smith
Tim Cornelius	Patrick McNichol	
Sam Criswell	Matt Myers	

## Members unable to attend:

John Marshall	Gary Tamkin
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## IACP Staff in Attendance:

Joe Abrusci	Chuck Hayes
Kyle Clark	Jim Maisano

## Guests:

Keith Williams, NHTSA	Christine Frank, NHTSA
Jerry Miller, ITSMR	Mike Iwai, Ontario PD, OR
Michael Blute, GA DEC	Chris Heartsill, Tox. - NHTSA
Tim McCarson, NM DEC	Erin Holmes, ABBOTT
Rob Duckworth, IN HSO	Tim Hanks, NC DEC
Erin Inman, NTLC	

**Welcome and Introductions:** Chair Railey welcomed all TAP members and guests and called the meeting to order at 9:00 am CST. There was a round table of self-introductions by all attendees.

**TAP Membership Mission/Responsibilities and Goals:** Chair Railey reviewed the Mission, Responsibilities and Goals of the TAP. He stated that each member has a unique role, and each was chosen for a specific reason and for the skills they bring to the TAP.

**Review/Approval of 2022 TAP Mid-Year Meeting Minutes:** The minutes from the 2022 Mid-Year Meeting were reviewed and approved as written.

**IACP Updates:** Kyle Clark provided the following updates from the IACP.

**2022 IDTS Conference:** The 2022 Impaired Driving and Traffic Safety (IDTS) Conference was held August 21-23, 2022, and there were 1,133 attendees. With the conference's expansion to include general traffic safety topics, the conference provided over 60 training sessions that covered six tracks. The conference included an annual meeting for CARE and the DRE Section.

**Future IDTS Conferences:** The 2023 IDTS conference will be held at the Hilton hotel in Anaheim, California, on August 9 -11, 2023. The state coordinators' meeting and the DRE Section meeting will be conducted on August 8, 2023. IACP is planning to begin work on securing locations for the 2024 and 2025 IDTS conferences. To assist with future planning, the goal is to have those locations identified ahead of time.

**Credentialing Updates:** Currently, there are 7,386 certified DRE in the United States, 976 in Canada, and 1 in the United Kingdom. IACP's goal is to have credentials completed within 30 days. The IACP has been meeting that goal unless there are issues with paperwork, such as missing signatures or other administrative matters. State coordinators can now go online and check the status of their DREs, whether active and expired. Some 10,000 longtime decertified DREs are on file in IACP's records and are housed separately from the currently certified DREs.

**New Cooperative Agreement:** A new Cooperative Agreement with NHTSA to manage the DEC Program for the next five years has been finalized. This year's agreement will include an evaluation component. The evaluation will take place between years 4 and 5. The agreement will continue to cover travel expenses for all U.S. TAP members for the two TAP meetings each year.

**NHTSA Updates:**

Keith Williams welcomed everyone and thanked the IACP for their work and gave a special thanks to the Curriculum, Scientific, and Standards workgroups and their work. He also congratulated the IACP on the new Cooperative Agreement and explained how NHTSA awarded the agreement through a competitive process. He provided information on roadway data, and it is estimated that 42,915 persons were killed in crashes in 2021. This is the most significant increase in NHTSA history and the highest number since 2005. Impaired driving crashes from 2020 show a rise of 14% over 2019 numbers. Impaired driving crashes from 2021 showed an increase of 9% over the 2020 numbers. He voiced his appreciation to Chair Railey's short and long-term goals for TAP. He ended his comments by stating that 7,396 DREs are not enough and that NHTSA looks forward to working together to expand those numbers.

Christine Frank provided the following NHTSA updates:

- **National DRE Data System:** The system currently has over 9,500 registrants and has good interaction with ITSMR and other state systems. Most of the recent releases and updates

have come from feedback from the DRE state coordinators. A recent update involved a system change which allows more users to be working on each page simultaneously. This fix will be especially helpful when state coordinators or course managers are teaching new DREs how to use the system during DRE schools.

- **New Course Updates:** There have been 1,181 registrants for the ARIDE Refresher. This is one of the most significant kick-off events that have taken place. Thus far, the feedback has been very favorable. One change has been made to ease the use when opening documents within the course. She had requests for an instructor-led version for those states that want in-person training, and that will be considered. The DRE Expert Testimony training course has been delayed. NHTSA is working on the technical build, and the project has been extended and planned to be completed by the end of December. The core impaired driving curricula updates have been delayed by the contractor. ARIDE has been piloted, and there are currently a couple of DRE pilots in progress. She mentioned that the main changes are in formatting and will take some work from the instructors. She is hoping to have the curricula released by the end of 2022. She thanked those states that have piloted the ARIDE and DRE courses.
- **SFST Dry Lab and Truth Is In The Eyes Videos:** The SFST dry lab videos are completed and will be rolled out with the new curricula. Christine thanked the South Carolina Criminal Justice Academy (SCCJA) for their assistance in developing the videos. The Truth is in the Eyes video will be released right after the release of the other curricula.
- **New Impaired Driving Research (Age, Weight, Lower BACs):** Previously, TAP asked for validation research of the SFSTs for persons overweight >50 lbs. and for older people being more than 65 years of age. Keith reported that research validation for these groups of people present significant complications that likely can't be overcome. NHTSA is conducting studies to develop supplemental/alternative impairment tests to address these populations as well as people with physical infirmities. These tests, if feasible, will be validated for alcohol. NHTSA is also researching impairment tests that relate directly to cannabis impairment. This is being conducted by Yale University, and the next phase will include input from DREs.
- **Roadside Driver Survey Update:** This project was awarded to Dunlap and Associates. It is still in the early stages. Data collection is expected to begin in the Spring of 2024. It is a 5-year project and will be coordinating with local law enforcement and Highway Safety Offices. It will include the testing for about 70 drugs, including over-the-counter medications and prescription drugs.

## Old Business

**DEC Program International Standards Revisions/Updates:** John Flannigan reported on the following Standards updates and actions:

- **SFST – Clarification of Proficiency Testing:** This standard was to clarify that the SFST

proficiency must be completed before the end of that training session. There is no remedial testing for the SFST proficiency after the class is over. A motion was made, seconded, and approved. **[Action Item: Approved]**

- **DRE 1.1 - Approval of Auditors:** This standard modification was primarily for DRE because SFST and ARIDE classes do not require Course Managers. The edit was to clarify who can approve auditors for the DRE training class. The modification ensures the approval is with the course manager and/or the state coordinator. A motion was made, seconded, and approved. A Scribner's error was noted on the use of DRE in place of SFST and ARIDE in their applicable sections, which will be corrected. **[Action Item: Approved]**
- **DRE 1.17 – DRE Participation in Research:** This addition to the standards was to give the state coordinator some control of DREs in their state who may want to participate in research projects. The edit would also include a process for the state coordinator to get a review of the proposed research and methodology from the TAP Scientific Workgroup. Following a lengthy discussion, additional questions arose requiring further study. Chair Railey suggested this is an important issue and needs to be resolved carefully. Tabling will allow additional work on the language and the concerns discussed and allow NHTSA time to provide feedback. **[Action Item: Tabled to next meeting]**
- **DRE 4.1 - Decertification or Deactivation of DRE or Instructor:** The modification to this standard makes it clear that a state coordinator may remove a DRE's instructor status and allow the person to remain a DRE. It changes the use of the term Decertified to Remove Instructor Status. A motion was made and seconded. A discussion addressed one other place which deactivated needs to be replaced with consistent language. This was viewed as a Scribner's error and will be corrected. **[Action Item: Approved]**

**DEC Enhanced Standards:** Ohio submitted enhanced standards for 2023. They have been reviewed, and there were no conflicts with the International Standards. A reminder will be sent to all state coordinators that enhanced standards submissions are due in January 2023.

**SFST/ARIDE/DRE Curricula Updates:** Chuck Hayes stated that Christine gave a good overview of the process and the delays. There is a NHTSA workgroup working with TSI, which had been slowed down by COVID and staffing issues but is making progress. The IACP staff reviews the DRE School course managers' reports to identify issues that need to be addressed in future edits and updates. ARIDE pilot classes have been conducted in Oregon, Oklahoma and Indiana. David Roberts from Oklahoma reported the ARIDE classes had gone over very well. Tim Plummer reported the original was too DRE strong and the new curricula was much better. He reported that one thing of note was the class time due to the instructor-student ratio. Because of a small class, the training was completed early on Day 2. The only negative comment was that the human physiology section was cut down too much.

For DRE, there have been two pilots, one in Georgia and one in Texas. Both provided some excellent feedback. Three more pilots are in the planning, Connecticut, Delaware, and Ohio.

Chuck reported that when SFST is made available, pilots will be needed for that training. Chuck reported a curriculum update webinar was conducted in July, with over 100 people attending. It resulted in many conversations on social media with the main discussion centering on the instructions for the Modified Romberg Balance (MRB) test and the timing mechanisms. From that, it was learned there were some different interpretations on when and how to start the MRB test. This resulted in a conference call with the curriculum team and the instructions, and the proper test timing were clarified. Chuck also reported that major revisions were in the CNS Depressant session going from 6 to 4 subcategories, and in the Narcotic Analgesic session. Chuck thanked the TAP Scientific Workgroup (SWG) for their assistance with the updates for the drug categories and research supporting documents. Matt Myers commented that the work was an effort to update areas that needed to be updated. Chuck indicated that course manager reports continue to mention errors or omissions in the DRE drug category videos. Currently, there are no plans to create new videos as it is very time-consuming and expensive. Updates may be considered in the future if funding can be obtained. Lastly, the Curriculum Workgroup (CWG) are going through the DRE School quizzes, final exams and the Certification Knowledge Exam (CKE) to ensure they follow along with the curricula updates. It was also reported that control over the DRE School quizzes, and exams has become an issue in some states. The IACP is working on a way to periodically update the final classroom exams and looking at using software to have a quarterly final test to be provided to the state coordinators. Doing so will help safeguard the exams and help prevent the improper use of the exams. Tim Plummer, the chair of the TAP CWG thanked everyone for staying on track and working on this project.

**Drugs and Human Performance Fact Sheets Updates:** Chuck reported NHTSA and their project team continues to work on updating the 2014 Drugs and Human Performance Fact Sheets and are going through final review. For now, in the DRE pilot curricula, the 2014 Fact Sheets are listed. When the final release is completed, the references will refer to the Facts Sheets and not likely list the publication year.

**Scientific Workgroup Literature Review:** Joe Abrusci reported information on the SWG work had been covered and there was nothing further to report. Kyle reported this group has never been more involved than in this year's curricula updates and their work is greatly appreciated and extremely important.

**DRE Field Certification Training Updates:** Jim, Joe and Chuck gave an update on the DRE field certification sites in their regions. Joe reported on the Philadelphia, Winston-Salem, and Jacksonville sites. He also reported Tennessee appears to be developing two additional in-state sites and the feedback is good, but the sites are not open to out-of-state use at this time. A couple of other states are still enhancing their in-state sites. Chuck reported Maricopa County Jail in Arizona is no longer an option. However, thanks to George Chwe, the Arizona DRE state coordinator, and the Mesa Police Department, the Mesa site has become one of the best in the country. Chuck reported the Reno, Nevada site is still active and available for smaller groups of students. He also reported the California Highway Patrol is reopening two sites in Sacramento, CA for smaller groups of students. Jim reported the Oklahoma City site is active and accepting out-of-state certification states. He thanked David Roberts for his efforts in the state to keep this

working since a trust now runs the jail. He added that approval had been given from Houston and San Antonio, but we have not had those sites used yet to determine how effective they are. The Louisiana DRE state coordinator has indicated he plans to visit the Houston location, and if positive, he may use the site and will provide feedback. Chuck reminded everyone that the IACP and NHTSA continue to strongly recommend that states develop in-state sites if possible. He mentioned the workshop that was given at the IDTS Conference highlighted the Medford, Oregon site and it has provided an excellent working partnership with the police department and the community.

**NIJ-Funded RTI Cannabis Impairment Study:** Matt Myers reported there were no further updates on this study at this time.

**DUID Language Resolution:** Chuck brought a draft IACP Resolution to TAP after going to the DRE Section. Some revisions were recommended by the section and those were made. The idea behind the Resolution is to provide language and support to states to have DUI laws that include any drug or intoxicating substance. There are five states that do not have this language and struggle to get legislation passed, with Oregon and Florida being two of them. In some states, including Oregon, the defense argues that the impairment was caused by a non-controlled substance that was detected in the toxicology and therefore uses this as a successful argument and gets the cases dismissed. A motion to amend was made to modify the dates in the resolution from 2018 - 2020 to 2018 - 2021 and recalculate the percentage. Amendment was approved. The modified Resolution will go back to the DRE Section at their next meeting for approval. **[Action Item: Approved]**

**Tracking DRE Activity:** Chuck reported on the need to stress ways for the DREs to get work credit for DRE activities, to include evaluations and assisting other agencies. He hopes TAP members will use their influence and connections to encourage agencies to ensure this is being done. He mentioned two state police agencies are doing this through the trooper's daily activity reporting: North Dakota and Washington. He also believes this could assist in the recruitment of new DREs.

**Blood Testing in Fatally-injured Drivers:** Matt Myers reported that there is a huge gap in the testing of fatally injured drivers. Twenty-seven states mandate testing, and only 22 report their data to FARS and it appears we are missing much data. Matt is looking for ways to get the testing and reporting increased and looking at a possible IACP Resolution on the testing of all fatal injured drivers for alcohol and drugs. He provided a draft Resolution that was discussed. Jennifer Harmon talked about the efforts in California with new legislation to require the testing of fatally injured drivers and expand the testing period for hospital testing. She stated a Resolution would encourage the reporting of the testing. **[Action Item: The resolution was moved to New Business to give the members an opportunity to review the draft.]**

**New Business**

**New Jersey v. Olenowski DRE Court Case:** Beth Barnes reported that the case is a New Jersey *Frye* challenge to DRE, which lasted almost two years. (21 months of pre-motion hearings and court settings, 42 days of testimony from 16 witnesses, and discovery that required New Jersey to provide the DRE reports from two years totaling more than 5,800 pages.) The Special Master has issued his 384-page report of Findings of Fact and Conclusions of Law and ruled for the State. The ruling concluded: 1) DRE testimony is reliable, 2) the DRE protocol replicates generally accepted medical practices for identifying the presence of impairing drugs and their likely identity through a toxidrome recognition process, 3) the DRE matrix comports with matrices designed for this purpose and is generally accepted and used in the medical field, 4) the training DREs receive is comparable to that received by medical technicians, and 5) DREs are thus enabled to reliably apply the protocol. Therefore, **“the DRE protocol as a whole and its individual components are generally accepted in the scientific communities to which they belong, namely medicine and toxicology. . . . The State has clearly established that the *Frye* Standard for admissibility has been met.”** Accordingly, based on the evidence in this hearing, DRE evidence should be admissible. She further reported that procedurally, the case is not quite over and that it is not a published opinion yet. It is the Special Master’s recommendation to the New Jersey Supreme Court. The parties have filed their briefs and are awaiting a date to be set for oral argument. In her opinion, it would be very difficult for the Supreme Court to overturn this ruling. If approved and accepted, this ruling will serve as a great resource for prosecutors and witnesses who are involved with future *Frye* or *Daubert* challenges to DRE. It may even discourage some from trying to challenge DRE – especially under *Frye*. While not published, trial court judges do have access to the findings and even cite them. So, it will have some impact even in other states. Beth indicated that the only possible issue could be that New Jersey did such a great job and was willing to put so many resources into this, that it could possibly set unrealistic expectations for judges who preside over future DRE and *Frye* hearings. Beth advised that when the final Supreme Court ruling is released, that information will be provided to TAP and all other program partners.

**Credentials of Academy SFST Trainers:** Joe Abrusci brought up the topic of who can teach SFST based on questions asked by state coordinators and SFST instructors in his area. Not in all states are the DRE state coordinator the SFST coordinator. In some states, the POST Academy is using non-NHTSA programs, basically using their own curricula, and not following the NHTSA/IACP guidelines. He described where the NHTSA material in one program was used to make their own training program, and only referenced the NHTSA manuals, but they did not follow the NHTSA/IACP protocol. Chuck said he has concerns about some of the community colleges that are teaching SFST and how those instructors got their training and maintain their teaching knowledge and proficiency. Kyle mentioned there is the same issue in Florida. Overall, we want the students to come out of the academy trained in SFST, but some of these programs are not achieving this goal. It is recommended the DRE state coordinator, upon learning about any of this, should notify the agency or trainer that they are not teaching the official NHTSA/IACP SFST curricula and that they should not advertise it as such. **This was for information only; no action was taken by TAP.**

**Retaining DREs / DRE Incentives:** Chuck reported that many states are doing some type of incentive to keep DREs in the program. It ranges from premium stipends pay increases, a service

bar for the number of years of service as a DRE, some type of recognition, or upgraded DRE equipment. He mentioned one state that provides medical grade thermometers for their DREs. IACP is collecting information on the various incentives for DREs and can share that upon request. Chuck reported that feedback from some DREs he has contacted is that once they are certified or recertified, they do not hear from the state coordinator or regional coordinator until their next recertification and that there is a lack of communication with the state coordinator. Kyle reported that the IACP is working on a publication on why a DREs are needed, why it is important to be a DRE, along with information for the police administration about success stories of why a DRE is important in their agency. The IACP will be looking for ideas from anyone on TAP regarding ways to build this up to benefit the DEC Program.

**Feedback on TAP International Standards:** Kyle reported that the IACP has reached out to the DRE community for feedback about the effectiveness of the International Standards. The input was referred to Sam Criswell, the State Coordinator representative on TAP, and thus far, there has not been any feedback. Sam had a group look at this, and there were only a few grammar issues. Jim Maisano shared a document with grammar or clarification edits that do not have any substantive changes on any standard. A motion was made to approve all the edits provided to the group. The motion was approved. **[Action Item: Approved]**

**TAP Talk Publication:** Chuck shared a spread sheet about the TAP Talk publication, which is published for all DREs. The spread sheet listed past and future planned articles by subject matter and contributor. He expressed the need for assistance from TAP members for future articles. Kyle mentioned wanting to focus on the line-level DRE and how the information from TAP Talk can assist them. Even though the state coordinators are a different audience, they also get the TAP Talk publications. Members interested in submitting an article are asked to contact Kyle of any of the DEC Program staff. Typically, the article should be in the 300 – 350-word count. It can be from their TAP position or be something helpful to the DREs. If more than 350 words in length, we can provide a link to take them to a larger article. Kyle reported that the TAP Talk is well received and that only about ten or so DREs have opted out from receiving it.

**Resolution on Testing Fatal Drivers:** Matt Myers presented a draft Resolution that would come from TAP to support enhanced use of DREs, collection of forensic samples from fatal victims in a collision, and testing of living subjects in cases where the driver may have been impaired. Much discussion occurred about the “required” word used in the bulleted items. Chair Railey asked if there was a possibility of resolution later in the day or if the item needed to be tabled. Kyle brought up that it may need to be checked through the IACP Resolution Committee to see if this Resolution has any impact on similar Resolutions and other sections or committees within the IACP. The Chair recommended that since no motion has been made, to wait and bring the agenda item back in Old Business at the mid-year meeting. **(Action Item)**



## **From the Floor**

Chris Hartwell reported on the NHTSA Regional Toxicologist program and for NHTSA Region 7. NHTSA funded a 3-year pilot for NHTSA Regions 5, 7, and 9 for the regional toxicologists. He, along with Sabra Jones and Kristen Burke are the current Regional Toxicologists. One of the primary roles of the position is sharing of information and testing procedures and helping identify inconsistencies in forensic laboratories. He reported that he will be working on training for toxicologists. He also reported there have been many toxicology questions from law enforcement, prosecutors, and judges.

### **TAP Member and Workgroup Reports:**

**Police Administrator:** Ron Hoague reported that much of what he was going to address had been already discussed. He expressed one of the primary issues today is staffing, including recruiting and retention. As a chief of police, he is seeing fewer police candidates, and many are less suitable for employment. There's also a general malaise around traffic enforcement, which might be caused by a COVID hangover or the demoralization of the police. He stressed as leaders we need to ensure that agency heads know the advantages of having DREs and encourage DRE candidates through incentives or recognition. He also emphasized that political leaders need to see the value of traffic enforcement and, specifically, the DRE program and we all need to be the advocates who must get that message out.

### **At-Large DRE:**

Paul Batcheller reported on the prosecutor training program they are doing in his area. The training provides prosecutors with the “nuts and bolts” of the DRE program. They also address effectively prosecuting DWI cases and do an alcohol workshop where the prosecutors can observe the impairment indicators. He reported getting many questions and conversations about UV lights on the DRE Facebook page. Many of the comments and questions are related to using UV lights to detect drugs or drug residue on person's face or body. Dr. Citek indicated in the initial literature that it talks about some substances that fluoresce in UV light. Joe Abrusci mentioned that the green tongue was talked about for years before it got in the manual, and now we have it. It was suggested in future curricula updates, the use of UV lights and signs of drug use detected by the light should be addressed. Chuck Hayes added that he has often seen DRE students at field certification training overusing the UV light.

Patrick McNichol thanked everyone for the assistance with the Olenowski DRE case in New Jersey. He also reported that New Jersey is starting an oral testing training with the states DREs. He reported that New York is finishing up a DRE School and going to Florida for their field certification training.

Nick Knoll reported that northern Idaho and the rest of the state are seeing increased use of Fentanyl along with other narcotics, which appear slightly different from other opioids. Heroin also continues to be a problem in the state. He expressed interest in ways to recruit DREs and plans to look at the IPTM DRE Prep Course as a model for recruiting officers for DRE.

**Highway Safety Office:** Michael Hanson reported on last week's GHSA Conference in Louisville, KY. Much of the discussions were recognizing and supporting law enforcement in their traffic safety efforts. One of the high points of the conference was the presentation by William Bratton, former New York City Police Commissioner. Another major area discussed was the Infrastructure Bill passed by Congress. Mike reported this will provide much-needed funding for NHTSA and, later, the local highway safety offices. The highway safety offices are looking at changing from an annual Highway Safety Plan to a tri-annual plan. He reported the national LEL Program ended on September 29<sup>th</sup> and GHSA is working to ensure the services they did will be covered. He also reported that in his home state of Minnesota, cannabis edibles were legalized, but there was no mechanism in place to enforce it or control it.

**Roadway Safety Committee:** Matt Myers reported the Roadway Safety Committee, formerly titled the Highway Safety Committee, meets tomorrow and he will be attending that meeting. He had nothing else to report.

**International:** D'Arcy Smith reported Canada is working to build their DRE numbers back up. He reported another group of DRE students are going to Florida next week for their field certifications and a couple other schools will also be going to Florida later this year. He reported on a phone App he agreed to test that officers can use to record notes, document the SFSTs, and generate a narrative report from their observations in the field. The App was developed by a company in Canada. He provided an update on Québec and that they are still needing to use the enhanced role player for field certification training. One of the major issues continues to be language barriers.

**Medical/Optomety:** Dr. Gary Tamkin was unable to attend the meeting and no report was provided.

Dr. Karl Citek reported on his contacts by an eye testing device company from Montana and he has had several conversations with them about their device. He explained that TAP does not endorse specific products. He reported if the device does what they say, they can look at spending a lot of time court.

**NHTSA:** Christine Frank reported the contract with GHSA for the national LEL program has expired. However, following a competitive RFP process, Johns Hopkins University was selected. The agreement will have an evaluation component. She also reported NHTSA is aware of the need to update the DRE drug category videos, and this will be a future project. Finally, Christine informed the group of a project for offering webinars to assist DREs in meeting their recertification training requirements.

**Police Training:** Tim Cornelius reported on the IPTM Traffic Symposium held in June in Orlando, FL. He also reported on sending letters to police administrators that do not have DREs in hopes of promoting the program and recruiting officers for the training. IPTM is doing an online DRE Preparatory Training that is proving to be very successful in getting officers prepared for the DRE Schools held in Florida. He answered several questions about the preparatory training and

offered to share the online link with anyone interested.

**POST:** David Beatty provided an update on the Oregon DUI Conference that held in April. The conference was very successful and included more attendees than previous years. Next year's conference is planned for April 2023.

**Prosecutor:** Beth Barnes provided information on Michigan, *People v. Bowden* case, which is a Daubert challenge to DRE, and is still pending. She also provided information on the following new opinions and potential DRE-related issues: Colorado – *People v. Raider*. After being arrested for DUI, Raider refused both the offered breath and blood tests. Colorado's "Expressed Consent Statute" prohibits the use of almost all forced specimen collections. Accordingly, the officer applied for and obtained a warrant which authorized them to use reasonable force as necessary to obtain a blood sample. The defense claimed the statute prevented all forced blood draws, even when the officers have a warrant. When considering whether the statute applied to all blood draws or only warrantless blood draws, the Colorado Supreme Court held that the Expressed Consent Statute has no bearing on blood draws obtained pursuant to a valid warrant and reversed the court of appeals decision that had suppressed the blood results. Illinois – *People v. Stribling*. The Illinois Court of Appeals held that because marijuana is now legal in Illinois, the odor of marijuana alone does not constitute probable cause to search a vehicle. The case is expected to proceed to the Illinois Supreme Court as it conflicts with the previous 1985 Illinois Supreme Court *People v. Stout* opinion which allowed such searches. This is a common issue in states that have either medical or recreational marijuana.; Massachusetts - *Commonwealth v. Moreau*. Following a car crash and observations consistent with alcohol impairment, Moreau was transported to a hospital where blood was drawn for routine medical testing - not at the direction of the police. An officer served the hospital with a preservation letter for any blood that was drawn and subsequently obtained a search warrant to seize and test the hospital's blood. The police did not request or obtain the defendant's consent to test the blood for alcohol. Massachusetts has a statute providing that evidence of a defendant's alcohol concentration, which is obtained by or at the direction of the police, may be admitted in a DWI case only if the suspect consented to the chemical test or analysis of the blood. The Massachusetts appellate court held that this statute prevented the admission of the chemical test analysis even though the blood was first drawn independently by a third party rather than by the police. She also discussed some potential challenges regarding blood collection tubes. The company that manufactures most of the blood tubes issued an "Urgent" advisory indicating their tubes contain isobutylene which may cause blood test results to indicate a false positive for methanol. The advisory specifically states that the potential issue "will not impact the determination of ethanol." So, this is not an issue because it will not affect the accuracy of our blood alcohol test results. However, this could be a defense challenge issue and cast doubt on the test results.

A Technical Note from the Journal of Forensic Sciences [*Isobutylene Contamination of Blood Collected in 10-ml Evacuated Blood Collection Tubes with Gray Conventional Rubber Stoppers*] explained how using dual-column gas chromatography enables a lab to distinguish between methanol and isobutylene. Not all state labs use dual-column gas chromatography, but this

should assist those that do and may assist others as well. Additionally, during the recent tube shortage, some blood kit manufacturers, and states, were using Cardinal or another source for their tubes. That may be another reason this is a non-issue in some of our cases.

**Regional Coordinators:**

**Western Region** – Tim Plummer reported much of his report had already been covered. He sent out a request to the state coordinators in his region for topics or issues and received none. He provided an update on Oregon Ballot Measure 110 which decriminalized most drugs in the state and stressed other states to be aware of this type of movement. He reported that in Oregon, alcohol DUI cases are down, but the drug cases are increasing. He described a recent court case in Oregon where once the suspect invokes an attorney, officers cannot ask anything else, including asking if they want to take a chemical test. He provided an update on the Medford City Police Department field certification site and how well that is working out and provides an excellent outreach in the community. They are trying to see if they can let any other states come in, but it would probably have to be in conjunction with the Oregon certification training.

**Central Region** – David Roberts had nothing additional to report.

**Eastern Region** – John Flannigan reported that his last TAP report was not good. However, he reported that things are moving forward and there have been more DRE Schools in the region this year. Most of the Eastern Region states have held schools in the past year, and DRE numbers are increasing. Rhode Island is assessing a new field certification site in the Providence area in early November. The Eastern Region has three new state coordinators, Melissa Shear (DC), Roy Bryant (DE), and Matt Oakes (VA).

**Sheriff's Offices:** Clint Shrum had nothing additional to report.

**State Coordinator:** Sam Criswell had nothing additional to report.

**Toxicology:** Jennifer Harmon reported she was going to bring up the NHTSA Toxicology Liaison program, but it had already been discussed. She reported there has been an increased supply request for the gray top stoppers for testing purposes and information about the possible false positives has been provided to the labs. She reported on the Society of Forensic Toxicologists (SOFT) meeting that will be held at the end of the month. She also reported there is a push to update the drugs that are being seen more, such as Delta-8 and Fentanyl, and Cocaine.

**DRE Section:** Jerry Sharp thanked Paul Batcheller for service as DRE Section Chair. He reported the Section has two new board members this year. He also thanked the work on the TAP Talk publication and other DRE-related articles that have been distributed. He plans to visit with the IACP DECP staff about how to increase the Section membership to include possible funding for DREs to be members of the Section. The DRE Section pin will be continued next year and was a big talking point. The vetting process for the DRE Section has been streamlined and improved and will be a much better process.

Kyle Clark reviewed the TAP positions up for appointment or reappointment. The deadline for submission is November 11, 2022.

The meeting was adjourned at 5:00 pm.