

UPCOMING TRAININGS & CONFERENCES

NDAA is making its National Courses available virtually in light of health and safety concerns over COVID-19. Check out a full list of NDAA's virtual learning sessions at ndaa.org/training-courses/.

NDAA's Mastering Masking Digital Course/ On Demand Training (CLE Available)
ndaa.org/training/mastering-masking-2/

NDAA's Human Trafficking and the Impact on Commercial Driver's Licenses/On Demand Training
ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/

NDAA's Prosecuting DUI Cases Online Course/ On Demand Training (CLE Available)
ndaa.org/training/prosecuting-dui-cases/

NDAA's Summer Summit
 July 18-20, 2021, Virginia Beach, VA

Well-Being Task Force: How to Stop Arguing Ourselves Out of Good Relationships
 August 10, 2021 @ 2:00 p.m. ET

Successful Collaboration Between Campus Public Safety & Prosecutors
 August 12, 2021 @ 2:00 p.m. ET

RESOURCES

Impaired Driving Resources
ndaa.org/programs/ntlc/

CDL-Related Resources
ndaa.org/programs/ntlc/commercial-drivers-license/

NDAA STAFF

Executive Director Nelson O. Bunn, Jr.
Chief Operating Officer Christine Mica

THE NATIONAL TRAFFIC LAW CENTER

Director
 Joanne E. Thomka jthomka@ndaajustice.org

Senior Attorneys
 M. Kimberly Brown mkbrown@ndaajustice.org
 Jim Camp jcamp@ndaajustice.org

Staff Attorney
 Erin Inman erinman@ndaajustice.org

Project Coordinator
 Courtney Jan cjan@ndaajustice.org

The National Traffic Law Center is a division of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number 693JJ91950010 from the U.S. Department of Transportation National Highway Traffic Safety Administration. Points of view or opinions in this document are those of the authors and do not necessarily represent the official positions or policies of the Department of Transportation or the National District Attorneys Association.



Smart, Comprehensive Impaired Driving Enforcement

Why Your Agency Needs Both ARIDE and DRES

By Kyle Clark, Project Manager, IACP, and Joanne Thomka, Director, National Traffic Law Center, National District Attorneys Association, Arlington, Virginia

STATE INITIATIVES TO DECRIMINALIZE DRUGS OF ABUSE HAVE RESULTED IN AN INCREASE IN DRUGGED DRIVING OFFENSES.

To protect motorists in their communities, police agencies are equipping officers with the skills to investigate these crimes through two interrelated programs. The Drug Evaluation and Classification Program forms the backbone of drugged driving enforcement through training and certifying drug recognition

Reprinted from *Police Chief Magazine* 24, Vol. 88, No. 1, pages 24-26, 2021. Copyright held by the International Association of Chiefs of Police, Inc., 44 Canal Center Plaza, Suite 200, Alexandria, VA 22314. Further reproduction without express permission from IACP is strictly prohibited.

experts (DREs), and the Advanced Roadside Impaired Driving Enforcement (ARIDE) training allows non-DRE officers to fulfill important support roles.

Why ARIDE?

The Advanced Roadside Impaired Driving Enforcement (ARIDE) training was developed in 2007 for the purposes of helping officers “become more proficient at detecting, apprehending, testing, and prosecuting impaired drivers” and soliciting the investigative assistance of DREs in drug-impaired driving investigations. While there are similarities between alcohol and many impairing drugs, there are a greater number of behaviors exhibited as the result of drug impairment that often go undetected by officers. Officers who stop drug-impaired motorists may be unable to properly identify the different signs of impairment and collect evidence of the crime. ARIDE training addresses this gap in knowledge.

ARIDE assists in roadside investigations as it builds upon the training in Standardized Field Sobriety Testing (SFST) and augments it to help officers screen for drug impairment. However, ARIDE training, like most training, is not without its limitations, and roadside tests are only screening tools. They are designed to efficiently identify impaired drivers while facilitating the swift release of sober motorists. Roadside tests, though, do not provide any corroborating chemical evidence relative to a DWI charge. That evidence is available post-arrest. In most states, the chemical corroboration for alcohol is in the form of breath or blood testing. With drugged drivers, corroborating chemical evidence is more complex. While a proven correlation between the alcohol level and the degree of impairment exists, there is no such toxicological nexus for drug impairment. The prosecution must establish any drug levels detected were affecting the defendant at the time of the arrest. This is where a specialized evidence technician becomes involved—the DRE.

Why DRE?

A DRE is a sophisticated crime scene investigator, specializing in the effects of categories of impairing drugs in the human body. While ARIDE officers receive general education pertaining to signs and symptoms of drug impairment, only certified DREs can provide specific, expert testimony that a drug category caused the driver’s impairment. That testimony is dependent upon the collection of evidence from the defendant based on the DRE protocol. The ARIDE officer’s role is akin to a first responding officer who does an initial assessment and then secures the crime scene. The DRE responds to identify and collect vital evidence, store it through a written record, and interpret it to identify the drug class or classes responsible for the impaired driving.

A DRE is a sophisticated crime scene investigator, specializing in the effects of categories of impairing drugs in the human body.

Courts have closely examined the DRE program and have found its methodology to be founded upon a reasonable degree of scientific certainty. Going to a drugged driving trial without the testimony of a DRE is similar to prosecuting an alcohol impairment case without an SFST—it can be done, but securing a conviction is much more difficult. In order to meet their burden of proof, prosecutors must have thorough documentation of evidence, including drug impairment, before they will bring the case to court. The evidence gathered by the ARIDE officer, the expertise of a standardized and systematically trained DRE, and the toxicology results together will provide the complete case file needed to proceed to court.

Without this complete investigation and evidence collected by a DRE, a prosecutor may dismiss the drug-impaired driving case for lack of evidence. As a result, agencies not utilizing DREs in these cases may see an uptick in civil litigation filed by those suspects for false arrest. The evidence a DRE can provide is critical to demonstrate that an agency acted appropriately; thus, the agency may avoid this form of litigation even if a case is dismissed on other grounds.

It is also important to remember that sometimes it is not alcohol or drugs that create the appearance of impairment. There are medical conditions that can cause or mimic, impaired driving behavior. DREs are trained to recognize these medical conditions, and numerous lives have been saved as the result of a DRE referring the arrestee for care. In 2019, DREs discovered 484 subjects arrested for DWI were actually impaired due to a medical condition, rather than alcohol or drugs. DREs can help avoid a potentially unlawful detention by recognizing a medical condition rather than alcohol or drug influence.

Stopping the Recidivism Cycle

Once arrested, drug-impaired drivers become part of the criminal justice system. This system is designed to hold defendants accountable and to modify illegal behavior. Inclusive in that is the opportunity for treatment to address those behaviors. Weak or incomplete drug-impaired driving cases, such as those arrests lacking the involvement of a DRE, if dismissed, will fail to get offenders into the substance abuse or mental health treatment they may need. Treatment for drug-impaired offenders may take many forms: individual or group therapy, inpatient treatment, or participation in DWI courts. According to a Duke University (North Carolina) research team,

Persons convicted of a DWI who completed a specialty court program were associated with a greater reduction in DWI rearrests and re-convictions than did matched individuals who were never referred to a specialty court program.

If an impairment case is dismissed, the offender is released, and the odds of re-offending remain high. By increasing the quality of drugged driving investigations by involving a DRE, the state is able to facilitate the treatment that may halt the recidivism cycle.

The Right Balance

SFST training is the first step for every agency to help reduce DWI offenses. SFST is the foundation for ARIDE and DRE. Every officer who could potentially encounter an impaired driver should be trained in SFST and receive refresher training at least once every three years.

Additionally, each officer should have access to a DRE for those DWI offenses where drugs may be involved. Most agencies lack the resources to have an on-duty DRE 24 hours per day, so having a DRE available to call out when necessary is critical. Many states offer overtime reimbursement programs to alleviate agency burdens with DRE overtime callouts.

Sharing DREs is a solid practice among policing agencies as well. Most often, the DRE is called in on an arrest by another officer. The DRE is there to collect evidence on behalf of the arresting officer, not to take over the arrest. Jurisdictional boundaries and venues fade in significance when it comes to preparing a proper case for court. Since impaired motorists can quickly traverse from one town to another, sharing DREs among policing agencies is prudent when agencies may be faced with fiscal shortfalls or budget cuts. It is smart, collaborative policing.

Officers need ARIDE training, and ARIDE-trained officers need DREs. ARIDE training enhances the SFST-trained officer's ability to recognize signs of drug influence in a motorist. However, an ARIDE-trained officer can gather only a limited amount of roadside evidence from the drug-impaired suspect. ARIDE-trained officers need access to a DRE to help process the crime scene and secure needed evidence for prosecution. As ARIDE training increases within agencies, the demand for DREs will rise. Law enforcement executives must facilitate access to DREs to secure needed evidence. When it comes to ARIDE training and DREs, policing agencies need both.

A total of \$1,775,000 is available for U.S. law enforcement agencies and qualified training institutions who are able to deliver drug recognition expert (DRE) schools and Advanced Roadside Impaired Driving Enforcement (ARIDE) classes. The awards are in the form of a contract for the delivery of training services and allowable expenses. For more information about this Drug-Impaired Driving Enforcement Training funding opportunity, please visit theIACP.org/DIDET.

NTLC Staffing News

The National Traffic Law Center is pleased to announce some exciting new staffing changes in our Commercial Driver's License Team.



Jim Camp is the new Senior Attorney replacing former Senior Attorney Romana Lavalas. Jim joined NDAA in October 2020 as the Staff Attorney on the FMCSA grant. A nationally recognized authority on traffic safety, trial advocacy, law enforcement and prosecution issues, he is an in-demand subject matter expert having served as an Elected District Attorney in Wisconsin for over 16 years and as an Assistant District Attorney General and Traffic Safety Resource Prosecutor in Tennessee for more than nine years. With more than 33 years of experience as a trial lawyer, most of those years were spent in prosecution with extensive experience in traffic safety, vehicular homicide, child abuse/neglect, drug delivery and domestic violence prosecutions, trial advocacy, office management and leadership, and adult education and training. Jim

has educated and provided authoritative advice to and for law enforcement, staff and command, prosecutors, legislators, committees, boards, traffic safety partners and private industry nationally. He has authored numerous articles on impaired driving and trial advocacy. He is a lifelong drummer, enthusiastic guitar picker, airplane pilot, second degree black belt, father of two, and the proud Grandpa of four grandchildren.



To complete the Team, NTLC is thrilled to welcome **Aaron Ann Cole-Funfsinn** as its newest member. She joins NDAA as the new CDL Staff Attorney for the FMCSA grant. Aaron Ann was born and raised in Kentucky but left the Bluegrass State to attend the University of Michigan in Ann Arbor and Loyola University Chicago School of Law. She began her career 13 years ago in the Cook County State's Attorney's Office as a prosecutor and most recently was based in the Kentucky State Police's Office of Legal Services to teach at the Academy and advocate for KSP. Thereafter, Aaron Ann became one of Kentucky's Traffic Safety Resource Prosecutors. In that role, she worked tirelessly to develop traffic-based trainings for law enforcement, prosecutors and other traffic safety stakeholders. Aaron Ann is on the faculty of the Kentucky Prosecutor's

Institute and is a member of the Kentucky CDL Advisory Committee and the Kentucky CDL Outreach Project. She is also a member of the Kentucky Impaired Driving Task Force. Her extensive prosecutorial experience in both Illinois and Kentucky, along with her traffic safety background, training experience, passion and commitment to saving lives on our roadways made her the perfect choice for the position.

After working as a Senior Attorney on the FMCSA grant at NDAA, **Romana Lavalas** moved to a wonderful new opportunity at the U.S. Department of Transportation (USDOT) where she now serves as an Attorney-Advisor with FMCSA. For four years, Romana worked tirelessly to advance the work of the NTLC and served as a valuable resource for prosecutors, judges, law enforcement officers, and others in the justice system by addressing CDL issues across the country. Romana worked on legal compilations, provided technical assistance, and presented trainings both near and far. It is Romana's background as a prosecutor and her command of the FMCSA's CDL regulations that make her a subject matter expert and are the reason why she is the perfect person for this role. NDAA's loss is certainly the USDOT's gain, and Romana will continue to use her qualifications to serve others in this important role.

The National District Attorneys Association's National Traffic Law Center (NTLC) is a resource designed to benefit prosecutors, judges, law enforcement officers and other allied professionals in the justice system. The mission of NTLC is to improve the quality of justice in traffic safety adjudications by increasing the awareness of highway safety issues through the compilation, creation, and dissemination of legal and technical information, and by providing training and reference services. The NTLC accomplishes this mission largely through cooperation with the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA), both agencies of the United States Department of Transportation.