



U.S. DEPARTMENT
OF TRANSPORTATION

DWI Detection And Standardized Field Sobriety Testing

Instructor Manual 2004 Edition



DWI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING

TRAINING GOALS AND OBJECTIVES

1. Ultimate Goal

To increase deterrence of DWI violations, and thereby reduce the number of crashes, deaths and injuries caused by impaired drivers.

2. Job Performance Objectives

As a result of this training, students will become significantly better able to:

- a. Recognize and interpret evidence of DWI violations.
- b. Administer and interpret standardized field sobriety tests.
- c. Describe DWI evidence clearly and convincingly in written reports and verbal testimony.

3. Enabling Objectives

In pursuit of the job performance objectives, students will be able to:

- a. Describe the tasks and decisions of DWI detection.
- b. Recognize the magnitude and scope of DWI-related crashes, injuries, deaths, property loss and other social aspects of the DWI problem.
- c. Discuss the deterrence effects of DWI enforcement.
- d. Discuss the DWI enforcement legal environment.
- e. Know and recognize typical vehicle maneuvers and human indicators symptomatic of DWI that are associated with initial observation of vehicles in operation.
- f. Know and recognize typical reinforcing maneuvers and indicators that come to light during the stopping sequence.

- g. Know and recognize typical sensory and other clues of alcohol impairment that may be discerned during face-to-face contact with DWI suspects.
- h. Know and recognize typical behavioral clues of alcohol impairment that may be discerned during the suspect's exit from the vehicle.
- i. Describe the role and relevance of psychophysical testing in pre-arrest screening of DWI suspects.
- j. Describe the role and relevance of preliminary breath testing in pre-arrest screening of DWI suspects.
- k. Know and carry out appropriate administrative procedures for validated divided attention psychophysical tests.
- l. Know and carry out appropriate administrative procedures for the horizontal gaze nystagmus test.
- m. Know and recognize typical clues of alcohol impairment that may be discerned during administration of standardized field sobriety tests.
- n. Describe the factors that may affect the accuracy of preliminary breath testing devices.
- o. Describe the elements of DWI prosecution and their relevance to DWI arrest reporting.
- p. Choose appropriate descriptive terms to convey relevant observations of DWI evidence.
- q. Write clear, descriptive narrative DWI arrest reports.

4. Additional Training Goals and Objectives

- a. If the four-hour (Introduction to Drugs That Impair) or eight-hour (Drugs That Impair Driving) modules are presented as part of the SFST training program, the goals and objectives for those modules are listed in the appropriate manuals.

**DWI DETECTION AND STANDARDIZED
FIELD SOBRIETY TESTING**

ADMINISTRATOR'S GUIDE

PREFACE

The Administrator's Guide provides an introduction and overview of the DWI Detection and Standardized Field Sobriety Testing (SFST) Training Program. The acronym "DWI" means driving while impaired **and is synonymous with the acronym "DUI", driving under the influence.** These terms refer to any and all offenses involving the operation of vehicles by persons under the influence of alcohol and/or other drugs. However, the focus of this curriculum is on the alcohol-impaired driver.

The procedures outlined in this manual describe how the standardized field sobriety tests (SFSTs) are to be administered under ideal conditions. We recognize that the SFSTs will not always be administered under ideal conditions in the field, because such conditions will not always exist. Even when administered under less than ideal conditions, they will serve as useful indicators of impairment. Slight variations from the ideal, i.e., the inability to find a perfectly smooth surface at roadside, may have some affect on the evidentiary weight given to the results. However, this does not necessarily make the SFSTs invalid.

Enforcement of alcohol impaired driving is a complex and demanding law enforcement responsibility sufficient to warrant a separate curriculum. This is not to deny or minimize the importance of detecting and arresting drivers impaired by drugs other than alcohol. Indeed, other materials (as referenced in this document) are available from the National Highway Traffic Safety Administration (NHTSA) to improve police officers' skills in **detecting** and **apprehending** drug impaired drivers.

In this regard NHTSA has developed two modules that address drug impaired driving:

- o **"Introduction to Drugs That Impair"** a four-hour overview of drugs other than alcohol that impair.
- o **"Drugs That Impair Driving"** an eight-hour module that provides officers with information on the general observable signs of drug impaired drivers. This module was developed to increase officer awareness of signs of drug impairment and the need to make referrals to Drug Recognition Experts.

Either module is an excellent add-on or follow-up to the DWI Detection and Standardized Field Sobriety Testing training program. Both are highly recommended. **HOWEVER, NEITHER WILL QUALIFY AN OFFICER TO SERVE AS A DRUG RECOGNITION EXPERT (DRE).**

All of the aforementioned impaired driving courses have been approved by the International Association of Chiefs of Police (IACP). National standards have been established by IACP to ensure consistency in the content, delivery, and application of the SFST and drug impaired training. The SFST standards are provided in this Administrator's Guide (see Appendix B).

For more information regarding these impaired driver detection programs, contact your State Office of Highway Safety or your NHTSA Regional Training Coordinator (See Appendices E and F).

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A. Purpose of This Document

The Administrator's Guide is intended to facilitate planning and implementation of the DWI Detection and Standardized Field Sobriety Testing Course. The core course consists of 16 sessions with two "live" alcohol workshops.

The Guide outlines acceptable options to the "core" training procedures (see "How Flexible Is The Course?", Item 7, page 7). It overviews the sequence of instruction, documents the materials and the teaching aides that make up the instructional package, describes course administrative requirements, and provides guidelines for discharging those requirements satisfactorily. The Guide sets forth the fundamental tasks that make up the job of DWI enforcement, and identifies knowledge, skills and attitudes police officers need to perform those tasks well. The Guide also outlines the preparatory work that must be accomplished (primarily at the departmental or academy level) before the course can be conducted, and outlines the follow-up work that should be undertaken, subsequent to training, to ensure that the desired outcomes of the training are realized.

B. Overview of the Course

1. For whom is the training intended?

Students should be any officers responsible for DWI enforcement who will actually use all aspects of the training, especially the three standardized field sobriety tests - horizontal gaze nystagmus, walk-and-turn and one-leg stand. Officers selected to attend this training should be aware of the hazards caused by impaired drivers, are motivated to arrest those drivers and their duty assignments enable them to spend the time required to process DWI offenders will benefit substantially from this course.

Some law enforcement agencies have concluded that the subject-matter should be offered only to officers who have amassed substantial on-the-job experience in detecting and arresting impaired drivers. Other agencies have advanced equally strong arguments to support the position that the training is appropriate for recruit-level officers. Either assessment is left up to the individual agencies using this curriculum. However, all user agencies should note that the ability to maintain the skills learned in this course will rapidly diminish if they are not reinforced by frequent "street" application and occasional in-service training. This is not to imply that this training is so complex or confusing that it can only be mastered by exceptionally skilled officers. The techniques of DWI Detection and use of the Standardized Field Sobriety tests can readily be grasped by anyone of average competence, provided they are willing to devote the appropriate time and effort to study and practice.

2. What are the purposes of the training?

The fundamental purpose of this training course is to foster DWI deterrence, i.e., to dissuade people from driving while impaired by increasing the odds that they will be arrested and convicted. This course is based on the assumption that a principal reason for enforcing DWI laws is to deter those who might otherwise be tempted to break the law. If potential DWI violators believe that there is a real risk of being caught, it is reasonable to believe most will refrain from driving while impaired.

Police officers can't possibly detect and arrest all DWI violators. Not all who are arrested will be convicted and punished. However, officers can improve the skills that increase the chances of detecting, arresting, recording, and articulating gathering sufficient evidence to sustain a conviction.

The training is based on the premise that officers perform two fundamental tasks which affect the likelihood of apprehending and convicting impaired drivers. The first of those tasks is Detection. In this course, "detection" is defined as "the entire process of identifying and gathering evidence to determine whether a suspect should be arrested for DWI". DWI detection begins when an officer's attention is drawn to a particular vehicle or its operator. The precipitating events are unlimited. The initial "spark" that causes the officer to focus attention on the particular vehicle may carry with it an immediate, strong suspicion of the possibility of impairment; or, only a slight suspicion of the possibility of impairment; or, depending on the circumstances, no suspicion at all at that time. Regardless, it sets in motion a process in which the officer focuses on the particular individual and has the opportunity to observe and elicit additional evidence.

The detection process ends only when the officer formulates the decision either to arrest or not arrest the individual for DWI. That decision, is based on all of the accumulated evidence. Effective DWI enforcers do not leap immediately to the arrest/no arrest decision. Rather, they proceed carefully through a series of intermediate decisions, each of which can elicit evidence. The course clearly outlines each decision step.

Successful DWI detectors are those officers who know what to look and listen for, who have the skills to ask the right questions and to choose and use the right tests. They are highly motivated and apply their knowledge and skill whenever they contact someone who may be under the influence. In this way they tend to make more DWI arrests and gather the best possible evidence to support their charges.

The second basic task of effective DWI enforcement is Description. Just as detection is the process of collecting evidence, description is the process of articulating evidence. Successful description demands the ability to verbally convey evidence clearly and convincingly. The officer's challenge is to communicate observational evidence to people who weren't there to see, hear or smell the evidence themselves. The officer's tools are words. These words make up the written report and verbal testimony which the officer uses to "paint a word picture" when communicating with the prosecutor, the judge, the members of the jury, and the defense attorney. This skill allows these people to develop a sharp mental image that allows them to "see," "hear," and "smell" the evidence. Successful DWI describers have the verbal skills needed to use descriptive words and phrases to communicate their evidence clearly and convincingly.

This training will help officers become more skillful at detection and description, make more DWI arrests, and obtain more convictions. These actions will lead to greater DWI deterrence through less impaired driving and fewer crashes, injuries and deaths.

3. What will the students get out of the training?

Students will learn to: recognize driving behaviors and other indicators commonly exhibited by impaired drivers; become better detectors and better describers by improving their knowledge, attitudes and skills in detecting the impaired driver and articulating their observations; develop a better understanding of the tasks and decisions involved in the DWI detection process; recognize the magnitude and scope of DWI-related crashes, injuries, deaths and property loss, and other social aspects of the DWI problem; understand the deterrent effects of DWI enforcement; have a better understanding of the legal environment relevant to DWI enforcement and use of the three standardized field sobriety tests (SFST); know and recognize typical clues of alcohol impairment that may be detected during face-to-face contact with DWI suspects; know and perform the appropriate administrative procedures for the divided attention psychophysical tests; know and perform appropriate administrative procedures for the horizontal gaze nystagmus test; know and recognize typical clues of alcohol impairment that may be seen during administration of the SFSTs; understand the DWI prosecution requirements and their relevance to DWI arrest reporting.

4. What subject matter does the course cover?

The course presents a substantial body of information relevant to the entire DWI detection process, including the organization, presentation and articulation of the evidence gleaned from that process. It also presents supportive information to bolster the students' awareness of the importance of effective DWI enforcement.

Key elements of the subject matter include:

- o The involvement of impaired driving in traffic crashes, deaths and injuries, both nationally and within the students' state(s).
 - o The concept of general deterrence of DWI, and evidence of the effectiveness of deterrence in reducing impaired driving.
 - o Laws governing DWI and its enforcement within the students' state(s).
 - o The concept of detection as a three-phased process, with specific evidence-gathering and decision-making tasks in each phase.
 - o The kinds of evidence of alcohol impairment typically associated with each phase of detection.
 - o Concepts and principles of divided attention (psychophysical) testing.
 - o Concepts and principles of Horizontal Gaze Nystagmus (HGN) testing.
 - o Guidelines for processing suspects arrested for DWI, preparing arrest reports and delivering testimony in DWI trials.
5. What activities take place during the training?

The principal activity of this course is hands-on practice by the students. In a variety of ways, they spend approximately three-quarters of the total training time actually doing various elements of the detection and description tasks. They observe video-taped presentations of vehicles and operators and gather evidence of impairment. They form decisions, i.e., to stop suspected impaired drivers, to request them to exit their vehicles, to administer standardized field sobriety tests, and to decide to arrest or not arrest them. They write narrative and other reports to document that evidence. They organize and testify to the evidence they have observed. Most significantly, they practice -- again and again -- administering and interpreting the standardized field sobriety tests.

Even though significant time is spent in lectures and demonstrations by instructors, the students are active participants, never passive listeners.

Among the most important learning activities of the course are the following:

- o Video-taped presentations of vehicles and operators exhibiting indicators associated with the various phases of DWI detection. Students view the tapes, then identifies and records the clues of possible impairment.

- o Brief "testimony" sessions are conducted where selected students attempt to give clear, convincing verbal descriptions of the clues observed in the video presentations.
- o "Dry run" practice in administering standardized field sobriety tests. Students work in small groups, taking turns administering Horizontal Gaze Nystagmus, Walk-and-Turn, and One-Leg Stand to each other.
- o "Controlled drinking" practice(s), in which students administer the standardized field sobriety tests to volunteers (not members of the class) who have consumed various amounts of alcohol. Students also practice observing, recording and interpreting test results during these sessions.
- o NHTSA/IACP approved video tapes of the three standardized field sobriety tests being performed by volunteer drinkers are available for options one and two only. These tapes allow students to practice observing, interpreting and recording the tests.

NOTE: The IACP strongly believes that conducting live alcohol workshops is the optimal way of achieving the learning objectives of this training.

- o Report writing exercise, in which students view a video tape of a simulated DWI detection/arrest sequence and prepare a detailed narrative report.
- o Moot court, in which selected students "testify", based on the contents of their narrative reports.
- o Written tests, in which students demonstrate their knowledge of the content subject matter.
- o A field sobriety proficiency examination, in which students demonstrate their ability to administer Horizontal Gaze Nystagmus, Walk-and-Turn and One-Leg Stand tests.

6. How long does the training take?

The core curriculum consists of 16 sessions that span 22 hours, 45 minutes of instruction, excluding breaks. With additional brief breaks and meal periods, the course requires three full training "days". There is no need to conduct the training for three consecutive days, nor to adhere to a traditional 8:00am - 5:00pm class day schedule. For example:

- o There may be reasons to spread the course over a five-day period or conduct some sessions at night.
- o A five-day sequence, with an average of four-to-five hours' instruction each day, will afford the students more independent study time and a better opportunity to assimilate the information presented.
- o Scheduling the "controlled drinking" practice sessions at night makes it easier to recruit volunteer drinkers. Also, it allows students to practice administering the standardized field sobriety tests under more realistic circumstances (most impaired driving arrests occur at night). If weather permits, these practice sessions can be held outdoors to enhance realism.
- o Evening and nighttime training sessions are less susceptible to interruption. A court appearance could cause a student to be absent from a daytime class for several hours. Such absences cannot be tolerated in this course: there is simply no way that a student can achieve the training objectives if several hours of instruction or practice are missed. **SESSIONS MISSED DURING EXCUSED ABSENCES MUST BE MADE UP.**

The sequence and duration of the 16 sessions are listed below.

Session	Title	Duration
I	Introduction and Overview	30 Minutes
II	Detection and General Deterrence	50 Minutes
III	The Legal Environment	70 Minutes
IV	Overview of Detection, Note Taking and Testimony	50 Minutes
V	Phase One: Vehicle In Motion	90 Minutes
VI	Phase Two: Personal Contact	90 Minutes
VII	Phase Three: Pre-Arrest Screening	40 Minutes
VIII	Concepts & Principles of the Standardized Field Sobriety Tests	200 Minutes
IX	Test Battery Demonstrations	40 Minutes
X	"Dry Run" Practice	50 Minutes
XI	"Testing Subjects" Practice: First Session	120 Minutes
XII	Processing the Arrested Subject and Preparing for Trial	90 Minutes
XIII	Report Writing Exercise and Moot Court	90 Minutes
XIV	"Testing Subjects" Practice: Second Session	120 Minutes
XV	Review and Examinations	110 Minutes
XVI	Program Conclusion	50 Minutes

- o *Officers trained in the NHTSA/IACP-approved SFST curricula, prior to the below revision date, remain qualified to administer and interpret the SFSTs based on their previous training.*

7. How flexible is the course?

All of the training objectives are considered appropriate and essential for police officers who wish to become proficient at detecting evidence of DWI and at describing that evidence in written reports and verbal testimony. All of the subject matter is considered necessary to achieve those objectives. All of the learning activities are needed to ensure that the students master the subject matter.

This curriculum normally takes about 24 hours to teach. To be recognized by IACP, regardless of hours, the student must have met all of the listed learning goals and performance objectives included in each of the 16 sessions.

This course is "flexible" in that it can easily be **expanded** since it does not cover all dimensions of DWI enforcement. For example, NHTSA has developed two modules addressing impairment by drugs other than alcohol. One module is approximately 4 hours in duration, the other module is approximately 8 hours. Both modules are designed to be completely compatible with this course and are excellent additions to the training whether taught independently or as an add-on.

In recognizing the limitation some agencies have in conducting live alcohol workshop, NHTSA sponsored research involving the use of video-tapes as an alternative training procedure (NOTE: See Attachment C). As a result of this research, NHTSA/IACP will now allow two options to the core curriculum:

OPTION ONE: To substitute NHTSA/IACP approved video tapes of "dosed" subjects for the first alcohol workshop (See Session XI-A) but to conduct the second alcohol workshop "live" as indicated in Session XIV.

OPTION TWO: To substitute NHTSA/IACP approved video tapes of "dosed" subjects for both live alcohol workshops (See Sessions XI-A and XIV-A).

It is critical to note that the purpose of this training is to ensure that students become proficient in administering and interpreting the standardized field sobriety tests. **Therefore, if either option one or two is selected, each student must maintain a log of every SFST administered.**

Note: During training, the Standardized Field Sobriety Tests (SFST) must be administered each time exactly as outlined in this course. For field conditions, refer to page 1 of the Preface.

C. Overview of the Curriculum Package

In addition to this Administrator's Guide, the curriculum package for the DWI Detection and Standardized Field Sobriety Testing course consists of the following documents and materials:

- o Instructor's Lesson Plans Manual
- o Visual Aids
- o Student Manual

1. Instructor's Lesson Plans Manual

The Instructor's Lesson Plans Manual is a complete and detailed blue print of what the course covers and of how it is to be taught. It is organized into sixteen modules, each corresponding to one of the course's sessions.

Each module consists of a cover page, an outline page, the lesson plans, and master (paper) copies of the visual aids ("slides") referenced in the lesson plans.

The cover page presents the session's title and the total instructional time required to complete the session.

The cover page presents the session's title and the total instructional time required to complete the session.

The outline page lists the specific learning objectives of the session, i.e., what the students will be able to do once they have successfully completed the session's learning activities. The outline page also lists the session's major content segments and the principal types of learning activities that take place during the session.

The lesson plans themselves are arranged in a three-column format.

- o The left column contains the training aides, i.e., time frames, visual aides, questions to be asked, etc.
- o The center column contains the "Content", i.e., an outline of what is to be taught.
- o The right column contains "Instructor Notes". They provide guidance concerning how the content is to be taught. The "Instructor Notes" specify, for example, how the instructor is to present the material, involve the students in the presentation, oversee their practice and ensure that they assimilate the material.

Typical entries on the "Instructor Notes" pages cover:

- o The approximate amount of time to be devoted to each major content segment;
- o Points requiring special emphasis;
- o Specifications and procedures for the hands-on practice opportunities;
- o Personal notes.

The Instructor's Lesson Plans Manual serves, as a means of preparing the instructor to teach the course. Every instructor should review the entire set of lesson plans to become familiar with the content and learning activities and develop a clear understanding of how the course "fits together". Instructors are expected to become thoroughly familiar with every session they are assigned to teach, to prepare acetate copies of the overhead transparencies ("slides"), to assemble all "props" and other instructional equipment referenced in the lesson plans, and to augment the "instructional notes" as necessary to ensure that individual teaching styles and experiences are applied to the content and learning activities.

The Instructor's Lesson Plans Manual serves as an in-class reference document for helping to maintain the sequence and pace of presentations and other learning activities. However, the information contained in the outlines are not to be read verbatim to the students.

2. Visual Aids

Four kinds of audio-visual aids are employed in this course.

- o Wallcharts
- o Chalkboard/flip-chart presentations
- o "Slides" (PowerPoint slides)
- o Computer-generated presentations
- o Video tapes

The wallcharts are permanently-displayed items. They consist of sketches with brief captions intended to depict major themes and segments of the course. Wallcharts can be handmade, using colored marker pens, on flip-chart sheets.

The sketches and text must be large enough so that they may be viewed from any seat in the classroom.

Master (paper) copies of the recommended wall charts are included in the Instructor's Lesson Plans Manual. Those masters may be photocopied onto acetate to produce overhead transparencies. The transparencies, in turn, can be projected onto flip-chart sheets and traced with colored markers to produce the wallcharts themselves.

The chalkboard/flip-chart presentations, as outlined in the lesson plans, are self-explanatory.

The "slides" are simple graphic and/or narrative displays that emphasize key points and support the instructor's presentation. Paper copies of all "slides" referenced in the lesson plans are found in each module of the Instructor's Lesson Plans Manual. The instructor should supplement the slides with locally prepared materials wherever appropriate.

The computer-generated presentations include PowerPoint or other similar programs.

Video tape presentations are provided and referenced in the instructor lesson plans. For example, a 10-minute presentation entitled "Visual Detection of DWI", and a 12-minute video entitled "The Detection of DWI Motorcyclists" are used in Session V.

Other video presentations consist of brief encounters with impaired motorists. These segments cover vehicle in motion observations, face-to-face contacts, and standardized field sobriety testing. Each video taped contact provides the students an opportunity to practice recognizing and documenting observational evidence of DWI. Subsequent to each contact, selected students are called upon to practice "testifying" about their observations.

The remainder of the video-tape presentations are classroom lectures-and-demonstrations covering the three standardized field sobriety tests and the NHTSA/IACP approved video-tapes used as options to the controlled drinking workshops in Sessions XI-A and XIV-A. The video-tapes may also serve as a review for graduates of the course.

3. DWI Detection and Standardized Field Sobriety Testing Student Manual

The DWI Detection and Standardized Field Sobriety Testing Student Manual serves as a reference source for the course. It provides a set of summary notes on the topical contents of each session.

The Student's Manual is intended to be used during the entire 16 sessions.

D. General Administrative Requirements

1. Facility Requirements

The presentation/demonstration sessions of the DWI Detection and Standardized Field Sobriety Testing course require a classroom with ample table/desk space for each student; an overhead projector and screen; a video tape player and one or more monitors easily visible to all students; and, a chalkboard and/or flip-chart. The classroom must have sufficient open space to permit realistic and clearly visible demonstrations of the standardized field sobriety tests. If possible, the students' tables/desks should be arranged in a U-shaped format, so that the instructors can conduct their demonstration in the open space in the center.

The hands-on practice sessions and the proficiency examinations require additional space consisting of a large open area (free of any obstructions such as tables, chairs, etc.) in which teams of students can work without interfering with each other. It must be possible to mark straight lines 12 to 15 feet long on the floor to facilitate practicing the Walk-and-Turn test (i.e., strips of easily removable tape). If weather permits, these practice sessions can be held outdoors to enhance realism.

The live "Testing Subjects" Practice Sessions (XI and XIV) require a separate room for the volunteer drinkers and use of one or more accurate breath testing instruments devices for monitoring their blood alcohol concentrations (BACs).

2. Instructor Qualifications

SFST instructors **MUST** have successfully completed the NHTSA/IACP approved Standardized Field Sobriety Testing (SFST) training program or its equivalent, and have experience in administering the SFSTs as well as providing testimony in court in the area of DUI/DWI enforcement. Dedicated, qualified instructors are critical to the continued success of the SFST program.

SFST instructors are responsible for observing, evaluating and verifying the performance of SFST candidates throughout the training process. Therefore, only persons experienced in the administration of the SFST battery should become instructors in the SFST training program.

If additional instructors are needed, at least one should be experienced in conducting an alcohol workshop. A ratio of at least one instructor for every 6 students is recommended. Their responsibilities include coaching students during the various hands-on practice sessions, and conducting the proficiency examinations during Session XV. All instructors must be fully proficient in administering the standardized field sobriety tests. It also may be beneficial to recruit an experienced DWI prosecutor to assist in conducting certain segments in Session III, The Legal Environment, Session XII, Processing the Arrested Subject and Preparing for Trial, and Session XIII, Report Writing Exercise and Moot Court.

It is preferred that instructors for the **four-hour** "Introduction to Drugs That Impair" module be Drug Recognition Experts. The instructors for the **eight-hour** module "Drugs That Impair Driving" must be DRE instructors or SFST instructors who are certified DREs.

3. Class Size Considerations

This course is a highly participative learning experience. Students need to have ample opportunities to practice applying the skills they are trying to learn; (i.e., observing, testifying, reporting and administration of the standardized field sobriety tests). Students need substantial individual attention during practice sessions.

The recommended maximum class size is 24 students. An ideal range would be 15-21.

E. Guidelines for Controlled Drinking Practice Sessions

The SFST core curriculum requires the participation of volunteers who will consume carefully measured quantities of alcohol and submit to standardized field sobriety tests administered by the students. Drinking volunteers are an essential resource for the core curriculum. Therefore, careful steps must be taken to ensure the volunteers' safety as well as their contribution to a worthwhile learning experience.

NOTE: WEAPONS ARE NOT PERMITTED IN THE VICINITY OF ANY DRINKING VOLUNTEER.

1. Criteria to be considered when selecting volunteer drinkers:

- o They cannot be members of the class.
- o **THEY SHOULD NOT BE LAW ENFORCEMENT OFFICERS.**
- o They must be verified to be at least 21 years old, but not over 65 years old.
- o They cannot have any history of alcoholism.
- o They cannot be known to suffer from any medical condition that may be exacerbated by alcohol (such as hypertension or diabetes).
- o They cannot be taking any medication (prescription or otherwise) that might adversely interact with alcohol.
- o They should be in good physical health.

2. Managing the Volunteer Drinkers

Transportation must be provided for the volunteers to and from the training session. Under no circumstances may volunteers be permitted to drive from the training session, regardless of their blood alcohol concentration (BAC) at the time of departure. Volunteers should be released only into the custody of responsible, sober persons.

It is suggested that there be a minimum of one drinking volunteer for every three to five students.

From the time of their arrival until safely disposed of, volunteers must be kept under constant supervision. It is suggested that at least one monitor be present for every four volunteers. Volunteer must be paired with a monitor of the same sex. The aides must monitor the volunteers, serve their drinks, make sure they comply with the schedule, and kept under close observation.

THE EFFECTIVENESS OF THE VOLUNTEERS AS TRAINING RESOURCES DEPENDS ON THEIR BLOOD ALCOHOL CONCENTRATIONS. IDEALLY, VOLUNTEERS AT ANY SESSION SHOULD ACHIEVE PEAK BACS BETWEEN 0.06 AND 0.14.

Volunteers should be instructed to refrain from eating two hours prior to their arrival at the training facility. Food in their stomachs may affect the absorption of alcohol into their bloodstreams, and impede your ability to control their BACs.

Volunteers should be brought to the training facility a minimum of three hours before the practice session is scheduled to begin. Each volunteer should be breath tested, have their pulse, blood pressure, and HGN checked and recorded.

NOTE: Additional time may be needed for administrative procedures.

3. Guidelines for achieving target BACs.

The table below indicates the ounces of 80-proof distilled alcoholic beverage that volunteers should consume, in relation to their weight and the "target" peak BAC, during a three (3) hour interval.

<u>Weight (Pounds)</u>	<u>MEN</u>	<u>WOMEN</u>
110	5	4
120	6	5
130	6	5
140	7	5
150	7	6
160	8	6
170	8	7
180	9	7
190	9	7
200	10	8
210	10	8
220	10	8

230	11	9
240	11	9
250	12	10

It is suggested that volunteers consume half of the total allocated amount of alcoholic beverage during the first hour. They should refrain from drinking or smoking prior to any breath test.

NOTE: A volunteer may cease drinking at any time.

F. Course Administrative Planning and Preparation Requirements

Course administrative planning and preparation tasks are to:

1. Select officers whom you expect to devote substantial amounts of time to DWI enforcement.
2. Identify the learning objectives that are appropriate for your students.
3. Tailor the instructional material, as appropriate, to conform to your learning objectives.
4. Select instructors and assign them to teach specific sessions of the course. Review the lesson plans and visual aids with the instructors. Give them sufficient time to prepare.
5. Prepare the instructional facilities by arranging the classroom seating format. Secure the necessary audio visual equipment and materials.
6. If the core curriculum or option one (1) is selected, recruit volunteer drinkers. Arrange for their supervision and transportation and secure the necessary supplies needed for the alcohol workshop(s).

G. Standards for Course Completion

In order to successfully complete this course of instruction, students must pass the written examination and demonstrate proficiency in administering and interpreting the standardized field sobriety tests.

1. The Written Examination

A written knowledge examination (post-test) is in the lesson plans for Session XVI. This test focuses on the administrative and interpretation procedures for the standardized field sobriety tests. Students must achieve a grade of 80% to successfully complete this training.

NOTE: For retesting requirements refer to IACP National Standards, Section 1.4. (Appendix B)

2. Assessing Student Proficiency

Instructors must decide whether individual students are proficient with the standardized field sobriety tests. This is accomplished by the following:

- o The lesson plans for Session XV (Review and Examinations) set forth a procedure for testing each student's ability to administer the three standardized field sobriety tests properly. "Passing" this test requires that the students administer the complete test battery at least once, in an instructor's presence, without deleting or erroneously performing any of the critical administrative elements of the tests.

H. Student Critiques

A student Critique Form is provided to document their ratings of course content and activities at the conclusion of the training. Evaluation of these critiques by the instructors and course coordinator is critical for maintaining a high degree of achievement in learning and delivery. The form is divided into eight parts:

- o Training Objectives
- o Workshop Sessions and Quality of Instruction
- o Course Design
- o Topic Deletions
- o Topic Additions
- o Overall Course Rating
- o Quality of Instruction
- o Final Comments or Suggestions

I. SFST Field Evaluations

The DWI enforcement performance of officers completing this training should be monitored and evaluated on a regular basis (e.g. every six months). This assessment should examine such factors as:

- o The number of DWI arrests recorded by the graduate.
- o The average BAC of those arrests.
- o The percentage of arrests resulting in DWI conviction.

This information should help document the utility of the course, identify officers who may need refresher training, and secure continuing command-level support for the training.

IACP and NHTSA strongly recommend that officers document all administrations of standardized field sobriety tests. At a minimum, this documentation shall include subject's name, date, results of each test, the officer's classification of subject's BAC and measured BAC, if available. A sample log is included in Session VIII.

NOTE: If options utilizing video-taped subjects have been used, maintaining the SFST Field Arrest Log is mandatory and extremely important.

REMINDER: Only the IACP/NHTSA options tapes are approved for the SFST instruction.

J. Requests for Information, Assistance or Materials

Please contact your state's Office of Highway Safety, and/or your NHTSA Regional Training Coordinator for help in planning and conducting this training. (See Appendices E or F)

SYNOPSIS OF THE SFST CURRICULUM

An Overview of the 16 Sessions

Session I - Introduction and Overview

This session has three Segments: "Welcoming Remarks and Objectives", "Administrative Details", and "Pretest".

Give a brief welcome and introduction. Briefly describe your credentials for providing SFST training and carefully state the goals and objectives of the course. This is a **preparation** step, focused in the **cognitive domain** of learning. During this segment have the students introduce themselves and print their names clearly on name tentcards, so that you will be able to call on them by name.

Next, you must attend to some essential "housekeeping duties", e.g., by notifying students of the schedule that will be followed, pointing out the locations of rest rooms, lunch rooms, etc.

The final segment is an **evaluation** step in the **cognitive domain**. You will have your students complete a 10-question pre-test that will allow you to assess how much they already know about DWI Detection and the SFSTs.

Session II - Detection and General Deterrence

This session has five Segments: "The DWI Problem", "Physiology of Alcohol", "Concept of General Deterrence", "Relating Detection to Deterrence Potential", and "Evidence of Effective Detection and Effective Deterrence". In most of these segments, you will present and discuss with your students some statistical information, which involves the **affective domain**, or attitudes. The second segment, Physiology of Alcohol, is a presentation step in the cognitive domain. It gives students a brief overview of the nature and affects of alcohol. In this session you will help your students reach some very important conclusions at the outcome of the course:

First, they will realize that impaired driving is responsible for the deaths and serious injuries of thousands of people in their own states. They have to believe that it is a serious problem that must be solved.

Second, they have to believe that many of the people who drive while impaired will stop doing that, at least some of the time, **if they fear getting caught**. Your students must see that we can create the fear of being caught.

Finally, they have to believe that this notion of deterrence through fear of arrest really does work. You can show them evidence that it has worked in the past and you can show them how to make it work in the future.

This session is an essential preparation step for the remainder of the training. The students must realize why it is important for them to improve their skills at DWI detection. But if they don't see the value of what you want them to learn, their learning efficiency will be low.

Session III - The Legal Environment

This session has five Segments: "Basic DWI Statute", "Implied Consent Law", "Illegal Per Se Statute", "Preliminary Breath Testing", and "Case Law Review".

The entire Session is a **presentation** step in the **cognitive domain**. It is designed to satisfy the well-recognized fact that "you can't enforce the law unless you know the law". The first four segments cover specific types of legislation that either define impaired driving offenses or that regulate the enforcement and prosecution of those offenses. It is the instructor's job to clarify those laws for the students, so they will understand what they have to prove and how they have to prove it when they arrest someone for impaired driving. Because these laws vary from state to state, **you may have to modify the content of the first four segments to ensure that the information presented accurately reflects the statutes of your students' jurisdictions.**

The final segment, "Case Law Review" focuses on how courts in various states have treated horizontal gaze nystagmus. You will need to clarify these decisions for your students so that they understand how they must introduce HGN evidence to ensure its admissibility.

Session IV - Overview of Detection, Note Taking and Testimony

This session is an important **preparation-plus-presentation** step in the **cognitive domain**. It has three Segments. In the first segment, "Three Phases of Detection", you will define an important concept of DWI Detection for your students. This concept views detection as a continual process of evidence gathering that ends in the arrest decision. The concept forms the basis for nearly all of the sessions that follow. In the second segment, "DWI Investigation Field Notes", you will introduce the students to a standard note taking guide that they will use in several subsequent hands-on practice sessions. In the final segment, "Courtroom Testimony", you will review requirements and procedures for presenting observed evidence of DWI violations.

Session V - Phase One: Vehicle in Motion

This session is the first of several sessions in which you will **explain and demonstrate** techniques of detection and testimony, and subsequently coach your students while they **practice** using those techniques. Both the **cognitive** and **psychomotor domains** of learning are involved.

Session V has five Segments. The first, "Overview: Tasks and Decisions", is a **preparation** step that defines what the patrol officer is supposed to do during the first phase of DWI Detection. The second segment, "Initial Observation: Visual Cues of Vehicle Operation", is a **presentation** step in which you explain and give concrete examples of the most reliable initial indicators of impaired driving. You will introduce fundamental concepts of alcohol impairment in this segment, and you will show two video tapes that portray what research has shown to be the most common visual cues of DWI.

The third segment, "Initial Cues, Recognition and Description", is a **coaching and practice** step. Specifically, your students will watch video segments of vehicles exhibiting possible indicators of impaired driving, and they will attempt to recognize those indicators and to describe them clearly and convincingly in written notes. Following each video segment, you will select a student who will attempt to give a clear and complete **verbal** description of the observations in a simulated courtroom setting.

In the fourth segment, "Typical Reinforcing Cues of the Stopping Sequence", you will explain and give examples of the kinds of indicators of impairment that may be observed when an officer signals a driver to stop. This sets the stage for the final segment, "Initial and Reinforcing Cues, Recognition and Description". Here again, students watch video segments of vehicles exhibiting some initial cues of DWI, and subsequently responding to an officer's stop command. The students attempt to compile accurate and clearly descriptive notes on their observations of the video segments. You choose representative students to offer verbal descriptions of the observations.

Session VI - Phase Two: Personal Contact

This session is very similar in structure to Session V. Here again we are involved with both the **cognitive** and **psychomotor domains**, and we conduct the **preparation, presentation and coaching and practice** steps of the teaching-learning process. Our focus now, however, is on the recognition and description of clues of impairment that come to light after the suspect's vehicle has come to a stop and the officer comes into face-to-face contact with the suspect.

The first of the six segments of Session VI is "Overview: Tasks and Decision". In that segment, you set the stage by explaining what it is that the officer is supposed to do during initial personal contact with a possible DWI violator. In the second segment, "Typical Investigation Cues of the Driver Interview", you explain and give examples of evidence that officers may obtain through their sense of sight, hearing or smell. In the third segment, "Recognition and Description of Investigation Cues", your students view a video segment that gives an opportunity to practice recognizing some clues. Subsequently, some members of the class are called upon to "testify" about those observations.

The fourth segment is "Interview/Questioning Techniques". Here, you explain and give demonstrations of simple procedures for questioning suspects that **divide their attention**, in an effort to elicit additional evidence of impairment.

The fifth segment is "Typical Clues of the Exit Sequence". In this segment, you explain and give examples of evidence that might be seen or heard when a suspect responds to an officer's request to exit the vehicle and proceed to roadside. Then, your students view a brief video that portrays a typical exit sequence, and they practice recognizing and describing the cues exhibited in that sequence.

The final segment is "Recognition and Description of Initial, Reinforcing and Investigation Clues". This is an additional **coaching and practice** segment, in which students view two video segments in order to recognize and describe the evidence portrayed. These videos are somewhat longer than the ones shown earlier, because they depict the initial sight contact with the vehicles, the stop command and the subsequent stopping sequence, the first face-to-face contact between officer and suspect, the interview of the suspect while still seated in the vehicle, and the exit sequence.

Session VII - Phase Three: Pre-Arrest Screening

This session is a **preparation and presentation** step in the **cognitive and psychomotor domains**. It is in this Session that you first introduce the students to the administrative procedures for the three standardized field sobriety tests.

The first segment, "Overview: Tasks and Decisions", is a **preparation** step, in which you explain what officers should do when employing SFSTs and preliminary breath tests (if applicable) to investigate suspected DWI violators.

In the second segment, "Divided Attention Tests: Concepts and Examples", you explain the fundamental concept of **divided attention** and its relationship to alcohol impairment, and you give several concrete demonstrations of tests that employ the concept. The two most important of those demonstrations focus on Walk-and-Turn and One-Leg Stand.

The third segment, "Horizontal Gaze Nystagmus: Concept and Demonstration", and the fourth segment, "Vertical Gaze Nystagmus", constitute the students' initial exposure to **nystagmus**. You explain the phenomenon, and relate it to impairment by alcohol. You give initial demonstrations of administrative procedures for HGN. **Note** this is a very brief introduction to nystagmus the instructor is only setting the stage for Session VIII.

In the fifth segment, "Advantages and Limitations of Preliminary Breath Testing", you will explain the role of PBTs in the DWI Detection process. While you need to do a thorough job in explaining how PBTs can help officers arrive at appropriate arrest/no arrest decisions, it is important that you do not oversell this technology. PBTs need to be presented in their proper context, i.e., something that can help corroborate officers' observations. They must not be viewed by students as the sole or most important basis for the arrest decision (optional if PBTs are not allowed in your state).

The final segment is "The Arrest Decision". At this time you will briefly review all of the evidentiary concepts covered in Sessions V, VI and VII, and you will stress the importance of basing the arrest decision on all of the evidence gathered during all three phases of DWI Detection.

Session VIII - Concepts and Principles of the SFSTs

In this session you fully explain and repeatedly demonstrate the three SFSTs. It is also at this time that students begin to practice administering these tests. All three domains of learning, **knowledge, skills and attitudes**, come into play.

The first segment, "Overview: Development and Validity", is a **preparation** step in the **affective** domain. Your goal is to convince your students that it is worthwhile to learn and use the SFSTs because they have scientific validity, a commodity not shared by any other field sobriety tests.

The second segment is "Horizontal Gaze Nystagmus (HGN)". Here, you present each of the three validated clues of HGN in sequence: Lack of Smooth Pursuit; Distinct and Sustained Nystagmus at Maximum Deviation; and, Onset of Nystagmus prior to 45 Degrees. You demonstrate the proper method of checking for each of these clues and, monitor brief but productive intervals during which your students practice checking for each clue. You also explain how to interpret the results of an HGN test, i.e., to evaluate whether or not a suspect is impaired based on the HGN clues, and you explain the scientific validity associated with the interpretation of HGN clues.

The third segment, "Walk-and-Turn", is identical in structure to the preceding segment. You explain and repeatedly demonstrate the instructional procedures for administering Walk-and-Turn. You involve students in these demonstrations, and you coach the students in properly giving the verbal instructions and physical demonstrations that must accompany the administration of this test. You explain the eight validated clues of impairment for Walk-and-Turn, and you explain how to interpret those clues in accordance with the findings of the validation research. You will set up and monitor practice intervals in which the students will administer the Walk-and-Turn.

The fourth segment is "One-Leg Stand". It is structured in much the same way as the second and third segments. You will explain and demonstrate how One-Leg Stand is administered. You will explain the four validated clues of impairment for One-Leg Stand, and you will explain how to interpret those clues in accordance with the validation research. You will set up and monitor practice intervals during which the students will practice administering the One-Leg Stand.

In the fifth segment, "Limitations of the Three Tests", you will explain the circumstances under which each of the SFSTs **might** not be reliable indicators of alcohol impairment.

In the final segment, "Taking Field Notes on the SFSTs", you will explain how to record the observed clues.

Session IX - Test Battery Demonstrations

This session is a **presentation** step in the **psychomotor domain**. Here, you will conduct several complete and careful demonstrations of how the three SFSTs are administered and interpreted. The Session has two Segments. The first is "Live Classroom Demonstrations". You will conduct two complete demonstrations of the three tests, using students as the test "subjects". Then, you will "talk" a student through a complete demonstration, using another student as the "subject".

The second segment is "Videotape Demonstrations". This videotape demonstrates the correct administration of the Standardized Field Sobriety Tests.

Session X - "Dry Run" Practice Session

This session is a **coaching and practice** step in the **psychomotor** domain. You will assign students to work in teams, taking turns administering the three tests to one another. You will monitor their work, and provide constructive criticism and commendations, as appropriate.

Session XI and Session XI-A - "Testing Subjects" Practice: First Session

The core curriculum requires a live drinking session. This two-hour session ends the second day of training. It is a **coaching and practice** step in the **psychomotor** domain. Again, you will assign the students to work in teams. But, instead of testing each other, they will administer the tests to a group of volunteer drinkers **who are not members of the class** and who have been recruited especially for this purpose. The students will carefully record, and interpret, the volunteers' performance of the tests, and will assess each volunteer's impairment. In the final segment of this Session, "Session Wrap-up", students will report their assessments of the volunteers, and will be informed of the volunteers' BACs. (Instructions for "dosing" volunteers are in the Administrator's Guide, page 15).

For Options One and Two students will view the NHTSA/IACP approved video tapes designated for this session. This two hour Session ends the second day of training. It is a **coaching and practice** step in the **psychomotor** domain. You will assign the students to work in teams. They will practice administration of the SFST on another student, view the video tapes, assess the video-taped subjects' impairment, and record their observations. In the final segment of this Session, "Session Wrap-up", students will report their assessments of the taped subjects, and will be informed of the subjects' BACs.

NOTE: The IACP strongly recommends using the core curriculum.

Session XII - Processing the Arrested Suspect and Preparing for Trial

This session is a **presentation** step in the **cognitive** and **psychomotor** domains. In the first of its five Segments, "The Processing Phase", you will review the tasks officers are supposed to perform when processing persons arrested for DWI. Since these tasks vary somewhat from agency to agency, **you may have to modify the content of this first segment.**

In the second segment, "Preparing the DWI Offense/Arrest Report: Documenting the Evidence", you will overview the kind of information officers should include in their DWI reports. Students will view a nighttime DWI stop and arrest scenario. They will record their observations on a DWI Investigation Field Notes form. In the third segment, "Narrative DWI Arrest Report", you will present and explain a model report writing format. The narrative DWI Arrest Report will be based on the students DWI Investigation Field Notes Form.

The fourth segment is "Case Preparation and Pretrial Conference". You will explain the things officers should do in preparing to testify in DWI cases, and you will emphasize the role of the pretrial conference with the prosecutor in trial preparation. You will show a video tape of a pretrial conference, and discuss the strengths and weaknesses of the officer's preparation with your students.

The final segment is "Guidelines for Direct Testimony". You will present and explain some "dos and don'ts" of testimony in DWI cases. You will show a video segment of a prepared officer. You will discuss the officer's performance with your students.

Session XIII - Report Writing Exercise and Moot Court

This session is a **coaching and practice** step in the **psychomotor** domain. In the first segment, "Procedures and Assignments", you will inform the students that they will view a video portrayal of a typical DWI detection-to-arrest sequence, and must then write a narrative report on that sequence, using the model report format presented in Session XII. In the second segment, "Report Writing Exercise", you will show the video and students will write their reports.

In the final segment, "Moot Court Exercise", two students will be selected to "testify" about this "arrest" in a Moot Court setting. **Please note** that the students selected to testify will do so independently of one another, and they will each be "sequestered" during the other's testimony.

Session XIV and XIV-A - "Testing Subjects" Practice: Second Session

The core curriculum and Option One require this session to contain a live drinking workshop. The procedures for this session are identical to Session XI.

For Option Two students will view the NHTSA/IACP approved video tapes designated for this session. The procedures for this option are identical to those in Session XI-A.

NOTE: The IACP strongly recommends using the core curriculum.

Session XV - Review and Proficiency Examinations

This session is a **coaching and practice** and **evaluation** step in the **psychomotor** domain. You will select students to administer the complete SFST battery, they will also explain and interpret the validated clues for each test. You will constructively critique the students' demonstrations and explanations, as appropriate. Then, you will show a video segment demonstrating the proper administration of a Standardized Field Sobriety Test. Next, you will formally **test** each student's ability to administer the three tests properly. **Students may not receive a certificate of completion of this training until they have "passed" the proficiency examination.**

Session XVI - Written Examination and Program Conclusion

This session is an **evaluation** step in the **cognitive** and **affective** domains. The cognitive evaluation is based on a written examination. The passing grade is 80%. The affective evaluation is based on an anonymous critique form that students will complete.

NATIONAL STANDARDS
FOR THE
STANDARDIZED FIELD SOBRIETY TESTING (SFST)
PROGRAM

Presented by

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STANDARDS FOR THE STANDARDIZED FIELD SOBRIETY TESTING (SFST) PROGRAM

Executive Summary

Since the mid-1970s, the National Highway Traffic Safety Administration (NHTSA), with the cooperation and assistance of the law enforcement community, has conducted research that resulted in the development of a battery of three standardized field sobriety tests (horizontal gaze nystagmus, walk-and-turn, and the one leg stand) to assist police officers in detecting impaired drivers. The program, which was previously termed Improved Sobriety Testing, was initially developed by the Los Angeles Police Department and was validated in laboratory and field studies conducted by the Southern California Research Institute. Training in how to conduct the tests is included in the NHTSA course DWI Detection and Standardized Field Sobriety Testing.

In 1986, the Advisory Committee on Highway Safety of the International Association of Chiefs of Police (IACP) passed a resolution which recommended that law enforcement agencies adopt and implement the field sobriety testing training program developed by NHTSA. As the program has grown, it has become apparent that in order to insure continued success, nationally accepted standards must be established. These standards, which establish criteria for the selection and training of SFST practitioners, would help insure the continued high level of success of the SFST program. In 1992, the IACP Highway Safety Committee recommended the development of this system of nationally accepted standards.

In April of 1992, the IACP and NHTSA sponsored a meeting at the headquarters of IACP in Arlington, Virginia. Persons invited to this meeting included senior SFST instructors from several states, curriculum specialists, and training administrators. The participants met in working groups to reach a consensus concerning the many issues relating to the SFST program and to develop recommended minimum standards to the IACP Advisory Committee on Highway Safety. The standards were drafted and presented to the committee for their review at the midyear meeting in June 1992.

The Advisory Committee on Highway Safety, by resolution, adopted the national standards for the SFST Program. The standards were subsequently approved by voting membership of the IACP.

Presented in this document are standards specifying the requirement for selection and training of SFST practitioners and SFST instructors.

I. STANDARDS FOR TRAINING IN STANDARDIZED FIELD SOBRIETY TESTING

Standards in this section specify the criteria which must be met prior to an individual's completion in the Standardized Field Sobriety Testing (SFST) Program. These criteria outline the knowledge and skills required to be considered for training, as well as the knowledge required for completion of the program.

The current approved curriculum involves a three-day training program. Prior to beginning the training program, students should have an interest in traffic law enforcement with an emphasis on DUI/DWI. During this training, students are taught to administer and interpret the results of the SFST battery, including horizontal gaze nystagmus (HGN), walk-and-turn and the one-leg-stand.

Upon completion of this classroom training, the student must pass a comprehensive written examination and successfully complete a proficiency examination witnessed by an SFST instructor.

1.1 In order to be considered for training in the SFST, a person shall be employed and under the direct control of a public criminal justice agency or institution involved in providing training services to law enforcement agencies.

Commentary: At the discretion of the agency head or administrator, and with consent of the training authority, other persons may audit or observe any or all portions of the SFST training.

1.2 SFST students shall complete an approved classroom training course which shall, at a minimum, achieve the learning objectives as stated in the IACP-approved training curriculum.

Commentary: This curriculum normally takes about 24 hours to teach. To be recognized by IACP, regardless of hours, the student must have met all of the listed learning goals and performance objectives included in each of the 16 sessions.

Because of the differences in the type and level of training for officers in the detection of impaired substances, agencies should determine the most effective means of providing classroom training in SFST. However, in order to maintain the credibility and integrity of the program, agencies that use a training program other than that currently approved by the IACP must have the alternative curriculum approved by the IACP Advisory Committee on Highway Safety as meeting the required learning objectives. In addition, the IACP Drug Evaluation and Classification Program Technical Advisory Panel, an advisory arm of the Advisory Committee on Highway Safety, will be responsible for providing periodic updates and modifications to the IACP-approved training curriculum. Presently, the core SFST training course is 24 hours in length and includes at least two controlled drinking sessions utilizing volunteer drinkers, (i.e., "live alcohol workshops"). Acceptable options to the "live" workshops involving the use of videotapes have been approved. The acceptable alternatives are (1) to substitute NHTSA/IACP approved videotapes of "dosed" subjects for the first alcohol workshop, but to conduct the second alcohol workshop "live"; or (2) to substitute NHTSA/IACP approved videotapes of "dosed" subjects for both alcohol workshops.

It is critical to note that the purpose of this training is to ensure that students become proficient in administering and interpreting standardized field sobriety tests. NHTSA and IACP recognize the limitations some agencies have in conducting live alcohol workshops. If either option is selected, each student must maintain a log of each SFST administered.

1.3 All SFST candidates shall attend and complete all classroom portions of an approved SFST curriculum. This shall include satisfactorily completing all assignments and required examinations. Students shall not be permitted to "test out" of portions of the training nor shall they be permitted to attend only those classes that they have not previously completed.

Commentary: Class sessions missed should be made up at the earliest possible time.

1.4 In order to satisfactorily complete the classroom portion of the training, SFST candidates must complete the IACP-approved final examination with a score of not less than eighty percent (80%). Candidates scoring less than 80% on the final may be retested one time under the supervision of an SFST instructor. The retest shall be completed not less than 15 nor more than 30 days following the completion of the classroom training.

Commentary: The examination used to retest the candidate shall be an IACP-approved examination and shall not have been administered to the candidate previously. If the candidate does not achieve a passing score on reexamination, the candidate must retake the classroom portion of the training and pass the final examination.

1.5 Upon completion of training, the candidate must demonstrate the ability to administer the SFSTs in the approved sequence and appropriately document and interpret the results.

Commentary: One of the primary factors in the success of the SFST program has been the emphasis upon a standardized approach. The training stresses the importance of a systematic, structured administration of the SFSTs. This includes completing all portions of the field sobriety tests in the appropriate sequence.

II. STANDARDS FOR TRAINING AS INSTRUCTORS IN THE STANDARDIZED FIELD SOBRIETY TESTING PROGRAM

These instructors will have successfully completed the IACP-approved Standardized Field Sobriety Testing (SFST) training program or its equivalent, and will have experience in administering the SFSTs and in proving testimony in court in the area of DUI/DWI enforcement. Dedicated, qualified instructors are critical to the continued success of the SFST program.

SFST instructors are responsible for observing, evaluating and verifying their performance of SFST candidates throughout the training process. Therefore, only persons experienced in the administration of the SFST battery should become instructors in the SFST training program.

Also addressed in this section are standards for instructors/trainers in the program. These individuals are responsible for training the SFST instructors.

2.1 Only persons who have successfully completed the IACP-approved DUI Detection and Standardized Field Sobriety Testing training program, or its equivalent, may be designated as SFST instructors.

2.2 Any SFST trained person desiring to become an instructor in the SFST Program shall make a written application through and be recommended by their agencies as meeting all requirements to become instructors.

Commentary: The agency head or SFST coordinator shall verify that a candidate instructor meets the prerequisites to enter SFST instructor training. Prerequisites may also include any state, local or agency requirements specified for instructors within the jurisdiction.

2.3 The candidate instructor shall satisfactorily complete the IACP-approved SFST Instructor School, or an approved equivalent, which shall include both knowledge and practical examination of candidate instructors. IACP/NHTSA - certified DRE instructors are recognized as SFST instructors and are approved to instruct the SFST program.

Commentary: This requirement does not preclude state or local jurisdictions from placing additional requirements on persons assigned to teach in local law enforcement programs.

The IACP Highway Safety Committee shall be responsible for reviewing and evaluating alternative training programs submitted by agencies. Those programs meeting or exceeding the approved learning objectives for instructor training shall be deemed "equivalent".

2.4 All training sessions conducted as part of the SFST Program shall be coordinated by a designated SFST instructor who has previously instructed, to insure proper conduct and delivery of the approved curriculum.

Commentary: To ensure that all training classes are conducted in accordance with the standards, it is recommended that the instructor coordinating the training have a minimum of one-year experience as a SFST instructor.

2.5 An instructor trainer (a person who is training instructors) shall have demonstrated proficiency as an instructor.

2.6 An instructor trainer must be knowledgeable of and have audited the SFST School and the SFST Instructor School, and must be thoroughly familiar with the SFST student and instructor manuals.

Commentary: An instructor must demonstrate evidence of the satisfactory completion of the IACP/NHTSA-approved Instructor Development Course or equivalent. Instructor trainers must be familiar with the approved SFST Training Program and be thoroughly familiar with the lesson plans for their assigned blocks of instruction.

III. SFST REFRESHER TRAINING

Commentary: To assist agencies administer refresher training, a CDROM refresher course has been developed by NHTSA and is available to interested agencies. See Appendix D.

**The Use of Video in Training for
Standardized Field Sobriety Tests (SFST)**

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TECHNICAL REPORT

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16. Abstract The NHTSA training program to certify law enforcement officers in administration of Standardized Field Sobriety Tests (SFSTs) includes two "workshops" in which trainees administer sobriety tests to alcohol-dosed subjects has led to consideration of video as an alternative training method. A preliminary study showed that Certified SFST examiners scoring videotaped performance of alcohol-dosed subjects obtained the same results as examiners scoring the subjects directly. An experiment was therefore undertaken to compare three alternative methods of conducting training during the workshops: live alcohol-dosed subjects (alcohol), video-recorded performances of alcohol-dosed subjects (video), and a combination of the video and alcohol methods (video/alcohol). A total of 133 SFST trainees were randomly assigned to the three training methods. The results disclosed extremely small and statistically nonsignificant differences among the three workshop methods in the proficiency with which trainees administered and scored the SFST with alcohol-dosed subjects in a final performance test. It was concluded that video provides an acceptable alternative to live dosed subjects in training law enforcement officers to administer SFSTs.			
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The Role of Video Training

The use of video tapes in Sessions XIA and XIVA is not intended to imply that video can serve as a "substitute" for training with live dosed subjects. However, a combination of practical and moral obstacles to use of alcohol-dosed subjects in training has threatened to prevent the administration of SFST courses in many jurisdictions. Here the choice is not between video and alcohol workshops but between video and no instruction at all. The results of this study clearly resolve that decision.

REMINDER: Only the IACP/NHTSA options tapes are approved for this instruction.

The Conclusions of this Study

From the results of this study, the following conclusions may be offered:

1. Videotaped administration of the Standardized Field Sobriety Test (SFST) of alcohol-dosed subjects can be used as an alternative to the use of live alcohol-dosed subjects in either or both of the current training "workshops" without altering the ability of trainees to administer or score the test.
2. Current SFST training leads to significant gains in knowledge of administration procedures and scoring criteria. However, gains in scoring the Walk-And-Turn and One-Leg-Stand are minimal owing to the objectivity of the scoring criteria.
3. The only significant differences among approaches to teaching the workshop involve the direction of trainee scoring errors on the Walk-And-Turn and One-Leg-Stand, where trainees from the video workshop tend to report slightly fewer impairment clues than Certified Examiners, while those participating in either or both alcohol workshops tend to report more clues.

REFERENCES

- Burns, M.; Moskowitz, H. Final Report on NHTSA Contract No. DOT-HS-8-01999: Methods for Estimating Expected Blood Alcohol Concentration. Washington, DC: NHTSA; 1980.
- Burns, M.; Moskowitz, H. (Southern California Research Institute). Prepared for U.S. Department of Transportation, NHTSA: Psychophysical Tests for DWI Arrest. Springfield, VA: National Technical Information Service; 1977 June; DOT HS 802 424. 126.
- McKnight, A. J.; Marques, P. R. Estimating alcohol impairment from behavioral cues. *Journal of Alcohol Studies*. 1991; 52(5): pp 389-397
- Russ, N. W.; Geller, E. S. Evaluation of a server intervention program for preventing drunk driving. Final Report No. DD-3 ed.; Blacksburg, VA: Virginia Polytechnic Institute and State University, Department of Psychology; 1986. 56 pages.

Tharp, V.; Burns, M.; Moskowitz, H. Development and field test of psychophysical tests for DWI arrest; 1981; NHTSA Report # DOT-HS-805-864. Available from NTIS, Springfield, VA 22151.

CDRom Refresher Training For The Standardized Field Sobriety Tests

In support of SFST training the National Highway Traffic Safety Administration (NHTSA) has developed a self-instructional SFST refresher training course using interactive CDRom as the delivery technology.

SFST refresher training can now take place anywhere, anytime, using a desktop personal computer or a laptop computer when offsite. This training targets law enforcement officers at the Federal, state, county and local level who have already taken, ***and successfully completed***, the basic SFST classroom training course.

These individuals will now be able to refresh their skills at:

- o recognizing and interpreting evidence of DWI;
- o administering and interpreting the scientifically validated sobriety tests, and
- o describing DWI evidence clearly and convincingly.

The refresher training course provides the user with information regarding recent case law and research studies conducted. Also, it outlines the availability of advanced training in recognizing and understanding the characteristics of drugs that impair driving.

A separate section of the refresher training course is designated for prosecutors. It is intended to assist them in understanding the concepts and principles of SFST.

To obtain a copy of the SFST CDRom Refresher Training Course, please contact your State Office of Highway Safety (Appendix E) or your closest NHTSA Regional Office (Appendix F).

STATE OFFICES OF HIGHWAY SAFETY

Alabama

Dept Of Econ & Comm Affairs
401 Adams Ave (PO Box 5690)
Montgomery, AL 36103-5690
(334) 242-5803
FAX (334) 242-0712

Alaska

Alaska Hwy Safety Planning
Agency
450 Whittier St.
Juneau, AK 99811
(907) 465-4374
FAX (907) 465-5860

Arizona

Gov's Office of Hwy Safety
3030 N. Central, Suite 1550
Phoenix, AZ 85012
(602) 255-3216
FAX (602) 255-1265

Arkansas

AR State Hwy & Trans. Dept.
11300 Baseline Rd
Little Rock, AR 72203-2261
(501) 569-2648
FAX (501) 569-2651

California

Business, Transportation, and
Housing Agency
7000 Franklin Blvd., Suite 440
Sacramento, CA 95823
(916) 262-0990
FAX (916) 262-2960

Colorado

Department of Transportation
4201 E. Arkansas Ave.
Denver, CO 80222
(303) 757-9440
FAX (303) 757-9219

Connecticut

Department of Transportation
PO Box 317546
2800 Berlin Turnpike
Newington, CT 06131-7546
(860) 594-2370
FAX (860) 594-2374

Delaware

Office of Highway Safety
Public Safety Bldg, Box 1321
Rte. 113 South & Bay Road
Dover, DE 19903-1321
(302) 739-3295
FAX (302) 739-5995

District of Columbia

DC Dept of Public Works
Frank D. Reeves Center
2000 14th St., NW, 7th Floor
Washington, DC 20009
(202) 671-0492
FAX (202) 939-7185

Florida

Department of Transportation
605 Suwanne Street, MS-53
Tallahassee, FL 32399-0450
(850) 488-3546
FAX (850) 922-2935

Georgia

Gov.'s Office of Hwy. Safety
1 Park Tower
34 Peachtree Street, Suite 1600
Atlanta, GA 30303
(404) 656-6996
FAX (404) 651-9107

Hawaii

Motor Vehicle Safety Office
Department of Transportation
601 Kamokila Blvd, Room 511
Kapolei, HI 96707
(808) 692-7650
FAX (808) 692-7665

Idaho

Department of Transportation
3311 W. State St.
Boise, ID 83707
(208) 334-8101
FAX (208) 334-3858

Illinois

Department of Transportation
PO Box 19245
3215 Executive Park Drive
Springfield, IL 62794-9245
(217) 782-4974
FAX (217) 782-9159

Indiana

Governor's Council on Impaired
and Dangerous Driving
ISTA Building, Suite 330
150 West Market
Indianapolis, IN 46204
(317) 232-4220
FAX (317) 233-5150

Iowa

Gov. Traffic Safety Bureau
307 East Seventh Street
Des Moines, IA 50319-0248
(515) 281-3907
FAX (515) 281-6190

Kansas

Bureau of Traffic Safety
Thacher Building, 3rd Floor
217 SE 4th Street
Topeka, KS 66603
(785) 296-3756
FAX (785) 291-3010

Kentucky

KY State Police Headquarters
919 Versailles Road
Frankfort, KY 40601-9980
(502) 695-6356
FAX (502) 573-1634

Louisiana

LA Hwy Safety Commission
PO Box 66336
Baton Rouge, LA 70896
(225) 925-6991
FAX (225) 922-0083

Maine

Bureau of Highway Safety
164 State House Station
Augusta, ME 04333
(207) 624-8756
FAX (207) 624-8768

Maryland

Office of Traffic and Safety
7491 Connelley Drive
Hanover, MD 21076
(410) 787-4017
FAX (410) 787-4082

Massachusetts

Gov. Highway Safety Bureau
10 Park Plaza, Suite 5220
Boston, MA 02116-3933
(617) 973-8904
FAX (617) 973-8917

Michigan

Office of Hwy. Safety Planning
4000 Collins Road
PO Box 30633
Lansing, MI 48909-8133
(517) 336-6477
FAX (517) 333-5756

Minnesota

Office of Traffic Safety
444 Cedar Street, Suite 150
St. Paul, MN 55101-5150
(651) 296-9507
FAX (651) 297-4844

Mississippi

Gov.'s Highway Safety Office
401 North West St., 8th Floor
Jackson, MS 39225-3039
(601) 359-7880
FAX (601) 359-7832

Missouri

Division Of Highway Safety
PO Box 104808
Jefferson City, MO 65110
(573) 751-4161
FAX (573) 634-5977

Montana

Department of Transportation
PO Box 201001
2701 Prospect Ave., Room 109
Helena, MT 59620-1001
(406) 444-3423
FAX (406) 444-7303

Nebraska

Office of Highway Safety
PO Box 94612
Lincoln, NE 68509
(402) 471-2515
FAX (402) 471-3865

Nevada

Office of Traffic Safety
Dept. of Motor Vehicles
& Public Safety
555 Wright Way
Carson City, NV 89711-0099
(775) 687-5720
FAX (775) 687-5328

New Hampshire

Highway Safety Agency
Pine Inn Plaza
117 Manchester Street
Concord, NH 03301
(603) 271-2131
FAX (603) 271-3790

New Jersey

Div. of Highway Traffic Safety
225 East State Street, CN-048
Trenton, NJ 08625
(609) 633-9300
FAX (609) 633-9020

New Mexico

Traffic Safety Bureau
604 W. San Mateo
P.O. Box 1149
Santa Fe, NM 87504-1149
(505) 827-0427
FAX (505) 827-0431

New York

Gov. Traffic Safety Committee
Swan St. Bldg., Empire Plaza
Albany, NY 12228
(518) 473-9007
FAX (518) 473-6946

North Carolina

Gov. Highway Safety Program
215 East Lane Street
Raleigh, NC 27601
(919) 733-3083
FAX (919) 733-0604

North Dakota

Drivers Lic. & Traf. Safety Div.
Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700
(701) 328-2601
FAX (701) 328-2435

Ohio

Office of Gov. Hwy. Safety Rep.
PO Box 182081
1970 W. Broad Street (43223)
Columbus, OH 43218-2081
(614) 466-3250
FAX (614) 728-8330

Oklahoma

OK Highway Safety Office
3223 North Lincoln
Oklahoma City, OK 73105
(405) 521-3314
FAX (405) 524-4906

Oregon

Transportation Safety Section
555 13th Street, NE
Salem, OR 97310
(503) 986-4190
FAX (503) 986-4189

Pennsylvania

Bureau of Highway Safety and
Traffic Engineering
555 Walnut Street
7th Floor, Forum Place
Harrisburg, PA 17105-2047
(717) 787-7350 or 8069
FAX (717) 783-8012

Rhode Island

Gov. Office of Highway Safety
345 Harris Avenue
Providence, RI 02909
(401) 222-3024
FAX (401) 222-6038

South Carolina

Department of Public Safety
5400 Broad River Road
Columbia, SC 29210
(803) 896-7896
FAX (803) 896-8393

South Dakota

Office of Highway Safety
Dept Of Commerce & Reg.
118 West Capitol
Pierre, SD 57501
(605) 773-4493
FAX (605) 773-6893

Tennessee

Gov. Highway Safety Programs
James K Polk State Office Bldg
505 Deaderick Street, Suite 600
Nashville, TN 37243
(615) 741-2589
FAX (615) 741-9673

Texas

Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483
(512) 416-3202
FAX (512) 416-3214

Utah

Highway Safety Office
Department of Public Safety
5263 South 300 West, Suite 202
Salt Lake City, UT 84107
(801) 293-2481
FAX (801) 293-2498

Vermont

Highway Safety Agency
103 South Main Street
Waterbury, VT 05671-2101
(802) 244-1317
FAX (802) 244-4124

Virginia

Transportation Safety Services
Department of Motor Vehicles
PO Box 27412
Richmond, VA 23269
(804) 367-1670
FAX (804) 367-6631

Washington

Traffic Safety Commission
1000 South Cherry Street,
MS/PD-11
Olympia, WA 98504
(360) 753-6197
FAX (360) 586-6489

West Virginia

Driver Services
Department of Motor Vehicles
Capitol Complex Bldg 3 Rm 118
Charleston, WV 25317
(304) 558-6080 Ext. 13
FAX (304) 558-0391

Wisconsin

Bureau Of Transportation
Hill Farms State Ofc. Bldg #933
4802 Sheboygan Avenue
PO Box 7936
Madison, WI 53707-7936
(608) 266-3048
FAX (608) 267-0441

Wyoming

Highway Safety Program
5300 Bishop Blvd., PO Box 1708
Cheyenne, WY 82003-9019
(307) 777-4450
FAX (307) 777-4250

American Samoa

Office of Highway Safety
Government of American Samoa
PO Box 1086
Pago Pago, AS 96799
(684) 699-1911 or 2911
FAX (684) 699-4224

Guam

Dept. of Public Works, OHS
542 N. Marine Drive
Tamuning, GU 96910
(671) 646-3211
FAX (671) 646-3733

**Commonwealth of The
Northern Marina Islands**

Department of Public Safety
Office of Special Programs
Commonwealth of No.
Mariana Islands
PO Box 791
Civic Center; Susupe Village
Saipan, MP 96950
(670) 664-9128
FAX (670) 664-9141

Puerto Rico

Traffic Safety Commission
Box 41289, Minillas Station
Santurce, PR 00940
(787) 723-3590
FAX (787) 727-0486

Virgin Islands

Office of Highway Safety
Lagoon Street Complex
Fredriksted
St. Croix, VI 00840
(340) 776-5820
FAX (340) 772-2626

Indian Nations

Indian Hwy. Safety Programs
Bureau of Indian Affairs
Dept. of Interior, Suite 1705
505 Marquette Avenue, NW
Albuquerque, NM 87102
(505) 248-5053
FAX (505) 248-5064

NHTSA REGIONAL OFFICES

New England Region

Volpe National Trans. Systems Center
55 Broadway - Kendall Square - Code 903
Cambridge, MA 02142
(617) 494-3427
FAX (617) 494-3646

Eastern Region

222 Mamaroneck Ave, Suite 204
White Plains, NY 10605
(914) 682-6162
FAX (914) 682-6239

Mid Atlantic Region

10 South Howard Street, Suite 4000
Baltimore, MD 21201
(410) 962-0077
FAX (410) 962-2770

Southeast Region

Atlanta Federal Center
61 Forsyth Street, SW, Suite 17T30
Atlanta, GA 30303
(404) 562-3739
FAX (404) 562-3763

Great Lakes Region

19900 Governors Drive, Suite 201
Olympia Fields, IL 60461
(708) 503-8822
FAX (708) 503-8991

South Central Region and Indian Nations

819 Taylor Street Room 8A38
Fort Worth, TX 76102-6177
(817) 978-3653
FAX (817) 978-8339

Central Region

PO Box 412515 (Zip 64141)
6301 Rockhill Road Rm 100 (Zip 64131)
Kansas City, MO
(816) 822-7233
FAX (816) 822-2069

Rocky Mountain Region

555 Zang Street, Room 430
Denver, CO 80228
(303) 969-6917
FAX (303) 969-6294

Western Region and Pacific Territories

201 Mission Street, Suite 2230
San Francisco, CA 94105
(415) 744-3089
FAX (744-2532

Northwest Region

3140 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174
(206) 220-7640
FAX (206) 220-7651

ALL MATERIALS ARE MASTERS – COPY AS NEEDED.**ATTENTION: LEAD INSTRUCTOR/COURSE ADMINISTRATOR**

In order to assist the National Highway Traffic Safety Administration in the validation of course materials, the Transportation Safety Institute is requesting your feedback. The purpose of conducting this evaluation is to determine:

- ◆ accuracy and completeness of course materials
- ◆ adequacy of course material design
- ◆ utility of course materials
- ◆ usability of course materials

Course materials are evolving documents which must be updated and refined in detail over the life of the course through a process of review, comment, analysis and revision in order to meet the training requirements of instructors as well as participants.

The attached questionnaire provides the expert users (lead instructors/course administrators) an opportunity to assess the viability of the course materials in relation to its capabilities and constraints. The goal of this questionnaire is to identify and set in motion actions to resolve course implementation issues as early as possible. The review and input that you provide is vital to the success of NHTSA's training mission.

DIRECTIONS: Fill out the **Lead Instructor/Course Administrator Questionnaire** at the completion of this course. Use this questionnaire to record your comments about the strengths and weaknesses of the instructional package provided for this course. Please provide detailed answers for each item requiring further explanation. (Use specific examples when available.) In addition, complete an **Instructor Roster and a Participant Roster** (*attachments are provided for your convenience*) **WITHIN 10 DAYS OF CLASS COMPLETION, RETURN BOTH ROSTERS AND QUESTIONNAIRE TO:**

**TRANSPORTATION SAFETY INSTITUTE
HIGHWAY TRAFFIC SAFETY DIVISION DTI-70
P.O. BOX 25082
OKLAHOMA CITY, OK 73125**

If further information is needed, or if you have any questions concerning this evaluation process, contact DTI-70, Phone: (405) 954-3112, FAX: (405) 954-8264.

INSTRUCTOR ROSTER

Course Name: _____

Course Date: _____

Course Location: _____

Name: _____ Name: _____

Title: _____ Title: _____

Organization: _____ Organization: _____

Mailing Address: _____ Mailing Address: _____

_____ Zip _____ Zip _____

Phone: _____ (_____) Phone: _____ (_____) _____

Name: _____ Name: _____

Title: _____ Title: _____

Organization: _____ Organization: _____

Mailing Address: _____ Mailing Address: _____

_____ Zip _____ Zip _____

Phone: _____ (_____) Phone: _____ (_____) _____

Name: _____ Name: _____

Title: _____ Title: _____

Organization: _____ Organization: _____

Mailing Address: _____ Mailing Address: _____

_____ Zip _____ Zip _____

Phone: _____ (_____) Phone: _____ (_____) _____

(COPY THIS FORM FOR ADDITIONAL NAMES)

PARTICIPANT ROSTER

Course Name:

Course Date:

Course Location:

Name: _____	Name: _____
Title: _____	Title: _____
Organization: _____	Organization: _____
_____	_____
Mailing Address: _____	Mailing Address: _____
_____ Zip _____	_____ Zip _____
Phone: ____ (____) _____	Phone: ____ (____) _____

Name: _____	Name: _____
Title: _____	Title: _____
Organization: _____	Organization: _____
_____	_____
Mailing Address: _____	Mailing Address: _____
_____ Zip _____	_____ Zip _____
Phone: ____ (____) _____	Phone: ____ (____) _____

Name: _____	Name: _____
Title: _____	Title: _____
Organization: _____	Organization: _____
_____	_____
Mailing Address: _____	Mailing Address: _____
_____ Zip _____	_____ Zip _____
Phone: ____ (____) _____	Phone: ____ (____) _____

(COPY THIS FORM FOR ADDITIONAL NAMES)

LEAD INSTRUCTOR/COURSE ADMINISTRATOR QUESTIONNAIRE

ACCURACY AND COMPLETENESS

1. The instructor manual and accompanying course materials **provide sufficient guidance** and information to plan, administer, and teach this course.

Strongly Agree Agree Disagree Strongly Disagree

Comments:

2. The **complete list of training aids**, devices and equipment needed to support this course are listed in the administrator's guide.

Strongly Agree Agree Disagree Strongly Disagree

If not, what needs to be added or deleted?

3. The work session **directions are explained thoroughly** for both instructor and student?

Strongly Agree Agree Disagree Strongly Disagree

Suggestions to clarify directions?

4. Are the instructional materials and media:

- | | | |
|---|-----|----|
| a. Easy to read and understand? | Yes | No |
| b. Easy to use? | Yes | No |
| c. Accurate and complete? | Yes | No |
| d. Congruent with stated objectives? | Yes | No |
| e. Appropriate to skill and knowledge level of course participants? | Yes | No |
| f. Clear in purpose , goals, and objectives for both students and instructors? | Yes | No |
| g. Modern in format and appearance? | Yes | No |
| h. Free of extraneous details or distractions? | Yes | No |
| i. Un-biased (free of gender, ethnic, or racial bias?) | Yes | No |
| j. Relevant to the instruction (does it provide "real world" highway safety examples?) | Yes | No |

4. (Continued) Cite specific examples for any “no” response.

ADAPTABILITY

5. The course material **accommodates all learning styles** (auditory, visual, tactile, etc.)?

Strongly Agree Agree Disagree Strongly Disagree

Comments:

6. The course material and content are adaptable (**some content can be altered in sequence, length, or strategy**) according to the needs of the sponsoring organization? **NOTE:** *Some courses which contain technical or legal information cannot be altered. These courses are excluded from this question. Example: SFST and DEC courses.*

Strongly Agree Agree Disagree Strongly Disagree

Comments:

USABILITY

7. The course modules are **logically sequenced** in a manner that allows ease of learning.

Strongly Agree Agree Disagree Strongly Disagree

If not, what sequence would you suggest and why?

8. Were there any particular **portions** of the course material or work sessions that students perceived as “**too difficult**”? If so, list and explain.

9. This course provides sufficient **opportunity for student interaction and participation.**

Strongly Agree Agree Disagree Strongly Disagree

Comments:

10. The course content allows **sufficient work sessions** which reinforce the lecture sessions.

Strongly Agree Agree Disagree Strongly Disagree

Comments:

11. The course content is broken into **logical learning “chunks”** that are easy for students to comprehend and retain.

Strongly Agree Agree Disagree Strongly Disagree

If you disagree, which segments need revision? Why?

12. Were you able to adhere to the **pre-determined time estimates**? If not, specify which segments need more time, which need less, and why.

RELEVANCE

13. The course materials will be used as a **future reference and resource tool** for students.

Strongly Agree Agree Disagree Strongly Disagree

Which materials do you consider the most useful?

14. Do you believe that **additional content segments** are needed for this course? If so, please identify and describe how they will benefit this instruction.

15. Should any of the content **segments** of this course be **eliminated**? If so, which ones and why are they not needed?

16. Does this course provide students with the **skills and knowledge** they needed to improve their job performance? If not, why?

17. What **recommendations** would you make for improving this course material?

Additional Comments?

TRIAL TIPS & TECHNIQUES

Courtroom Decorum

1. **TELL THE TRUTH.** Honestly is the best policy. Telling the truth requires that a witness testify accurately as to what he knows. If you tell the truth and are accurate, you have nothing to fear on cross-examination.
2. Condense your professional resume on to a 3x5 card, which you bring to court with you each time you receive a subpoena. On it, include your P.O.S.T. certification date, classes taken as a law enforcement officer, and other special awards or permits you have.
3. **READ YOUR INCIDENT REPORT** before you come to court. Go over the details in your mind so that you will have an independent recollection of the events of the arrest. **DO NOT** come to court and ask the prosecutor for a copy of your report. Do ask, prior to court, if you cannot locate a copy of your report.
4. Dress neatly and professionally; leave sunglasses, PR-24, flashlight and other cumbersome equipment in your car before coming into the courtroom, unless needed for a demonstration. Wear a coat and tie if you prefer.
5. Do not guess the answer to any question asked. It is **OKAY** to say "I don't know" or "I can't remember" in response to questions. Do not give the impression that you are guessing the answer by prefacing your response with "I think" or "I believe." If you do not know the answer, it is okay to look at your report and refresh your memory. Always give definitive, positive, sure answers.
6. Listen carefully to the question asked. Do not begin your answer until the prosecutor has finished asking the question. Be sure you understand the question before you attempt to give an answer. If necessary, ask that the question be repeated or rephrased if you do not understand it.
7. Take your time. Do not feel pressured to give a quick answer. After a question is asked, there may be an objection; allow this to happen. When you hear the word, "objection", stop testifying.

8. Answer the question that is asked, then stop. Do not volunteer information not asked for, or you will risk causing a mistrial, or even an immediate acquittal. DO explain an answer, if you feel your answer might appear ambiguous to the jury. You are always permitted to explain your answer. Tell the prosecutor prior to your testimony if there is anything you feel the prosecutor needs to know, but might not!
9. Be serious in the courthouse...Jurors are aware that criminal prosecutions are serious business.
10. Speak clearly and loudly enough so that you can be easily heard.
11. Look at the jury when testifying, even when the defense attorney asking the question is not standing near the box. Always talk to the jury, and maintain eye contact with them, even if it feels unnatural to you.
12. Always be courteous, even when the defense attorney is not. Control your temper, and never allow yourself to be drawn into an argument with that attorney. Remember, the best way to make a good impression with the jury is to appear courteous and professional. You were just doing your job during the arrest, and you do not have a personal stake in the case.
13. Testify in English. Do not say, "The perpetrator exited the vehicle" when in reality "the defendant got out of his car." The person on trial is never a "lady" or "gentlemen," but is always "the defendant." Do not use military times without clarifying the time in laymen's terms. Do not use call signals. It makes more sense to the jury when you speak the same language as they do.
14. It is permissible and desirable to discuss the case with the prosecutor before trial. A defense attorney may ask this question; tell the truth. Obviously, a prosecutor will try to discuss the case with the witnesses before trial; be straight forward in answering this question.
15. A defense attorney will always ask whether you have an independent recollection of the case. That is, aside from your police report or other notes, do you remember the event? Any fact that you remember about the stop and/or arrest of the defendant would be sufficient to answer this question positively.

Specific DUI Trial Recommendations

1. Never give the numerical alco-sensor reading of the defendant when asked by the prosecutor. However, if the defense attorney asks you for the **NUMERICAL** reading, give it to him/her. The prohibition of alco-sensor results of a defendant do not apply to witnesses, such as passengers in the car.
2. Always demonstrate how you conducted field sobriety evaluations. If the prosecutor forgets to ask you to come off the witness stand to demonstrate, suggest that it will aid your testimony. Be certain, however, that you can do in court all the evaluations you asked the defendant to perform the night of the arrest. If you cannot do them, the jury will not expect the defendant to have done them properly.
3. Know the reasons for giving field sobriety evaluations:
 - They are **divided attention test**, designed to detect when a person is impaired by alcohol and/or drugs.
 - They provide evidence of intoxication in case defendant refuses to take a state administered test under implied consent.
 - They prevent an arbitrary decision to arrest, and allow an Office to articulate the reasons for concluding a driver was DUI to someone not present at the scene.
4. You are not required to know, and in fact know nothing, about the Intoxilyzer 5000 or your jurisdiction breath test instrument, its internal workings or anything other than how to operate it and take a breath sample from a defendant. You are merely an operator of an instrument, and while you have been taught something about how the instrument works when you became certified as an operator, never testify to its internal workings, or the defense attorney will discredit you, and make you out to be a "thinks-he-knows-it-all" who really knows nothing.

Do Not bring the Intoxilyzer 5000 Operator's manual to court, or the log, unless instructed to by the prosecutor. Discuss any subpoena to produce that you may receive with the prosecutor, before complying with the subpoena.

5. Be aware that the margin of error in the Intoxilyzer 5000 is not + or - .02. The .02 grams comes into play in that the State's breath test results are not admissible if the sequential breath tests differ by more than .020 grams. If the two breath samples differ by more than .02 grams then the Intoxilyzer 5000 will give you an error message and you can either wait 20 minutes and give the defendant another breath test or take the defendant for a blood test. Also, margin of error only applies to statistical sampling such as polling data used in political campaigns. It does not apply to scientific instruments such as the Intoxilyzer 5000. According to the manufacturer the precision of the instrument is a standard deviation of 0.003 BrAC or better and the accuracy is better than federal requirements, $\pm 3\%$ or ± 003 BrAC, whichever is greater. Furthermore, the instrument has been approved by the Federal Department of Transportation.
6. If you get an "Invalid Sample" on the Intoxilyzer 5000 the instrument has detected residual mouth alcohol in the subject's breath. You must restart a twenty-minute waiting period and repeat the test or take the subject for a blood test. Remember to write the blood drawer's name on the police report! It is also a "best practice" to witness the blood draw yourself – this may allow the prosecutor not to have to call the hospital personnel as a witness.
7. When testifying about field sobriety evaluations remember to discuss the level of impairment of the defendant. Officers can testify to numerical scores on a field sobriety test, including HGN, and can testify to the level of impairment. For example you could say; "the defendant scored four out of a possible six clues on the HGN and four clues is considered impaired." Sieveling v. State, 220 Ga. App. 218 (1996). A police officer can state a defendant "failed" a field sobriety test. **However, see number 9 below!!!!**
8. If you are NHTSA trained and testify as to the accuracy of the field sobriety tests, make sure you know the numbers and their significance. Considered independently, the Nystagmus test was 77% accurate, the Walk-and-Turn, 68% accurate, and the One-Leg Stand, 65% accurate in identifying subjects whose BAC were .10 or more. NHTSA also found that it would be possible to combine the results of Nystagmus and Walk-and-Turn in a: decision matrix", and achieve 80% accuracy. The problem with numbers is that if you get confused, you can jeopardize a driving under the influence case. So follow the dictates of number 9 below.

Be sure the officer is aware that NHTSA has done validation studies, and the SFST is considered very useful in determining whether or not a defendant is driving while intoxicated. The officer doesn't have to know the numbers, or care, because in *this* case, *this* defendant was impaired.

9. With a proper Motion In Limine from the prosecutor, you can testify only as to the observations you make on the field sobriety evaluations. You would therefore not testify about the numbers of clues or whether the defendant passed or failed any tests. Thus, you would ignore the advice given in numbers seven and eight above. It is very important that you discuss this option with the prosecutor in advance of trial. This avoids the NHTSA requirements of passing or failing a test based on the number of clues. You would only testify as to what you observed regarding the defendant's manifestations of intoxication and performance of the field sobriety evaluations.

Police Witnesses

Although police officers and other professionals peripherally involved with the criminal justice system should be by nature more cooperative and competent as witnesses, it is not wise to assume too much, particularly if you haven't had that person as a witness on prior occasions. Leave nothing to chance. It is safer to prepare these witnesses as any other civilian witness. Accomplish this by always being mindful of the same considerations listed above and cover everything, even the basics. Some frequently encountered pitfalls with these kinds of witnesses include: a) relying too much on notes and reports; b) arguing with defense counsel; c) appearing to be too invested in obtaining a conviction; d) offering unsolicited and improper conclusions and opinion testimony; e) being non-responsive to the point of adding gratuitous comments; f) using too much law enforcement jargon; g) being overly defensive when in error; h) relying on too much "we" type of testimony instead of telling what they did themselves, or testifying to what they usually do as opposed to what they actually did in this case.

**American Prosecutors Research Institute
National Traffic Law Center**

**HORIZONTAL GAZE NYSTAGMUS
STATE CASE LAW SUMMARY**

INTRODUCTION

The following state case law summary contains the seminal cases for each state, the District of Columbia and the Federal courts on the admissibility of HGN. Three main issues regarding the admissibility of the HGN test are set out under each state: evidentiary admissibility, police officer testimony, and purpose and limits of the HGN test results. The case or cases that address each issue are then briefly summarized and cited.

Alabama

I. Evidentiary Admissibility

HGN is a scientific test that must satisfy the *Frye* standard of admissibility. The Supreme Court of Alabama found that the State had not presented “sufficient evidence regarding the HGN test’s reliability or its acceptance by the scientific community to determine if the Court of Criminal Appeals correctly determined that the test meets the Frye standards.”

Malone v. City of Silverhill, 575 So.2d 106 (Ala. 1990).

II. Police Officer Testimony Needed to Admit HGN Test Result

The Court did not address this issue.

III. Purpose and Limits of HGN

The Court did not address this issue.

Alaska

I. Evidentiary Admissibility

HGN is a scientific test. It is generally accepted within the relevant scientific community.

Ballard v. Alaska, 955 P.2d 931, 939 (Alaska Ct. App. 1998).

II. Police Officer Testimony Needed to Admit HGN Test Result

A police officer may testify to the results of HGN testing as long as the government establishes a foundation that the officer has been adequately trained in the test.

Ballard, 955 P.2d at 941.

III. Purpose and Limits of HGN

HGN testing is “a reliable indicator of a person’s alcohol consumption and, to that extent, HGN results are relevant.” The court cautioned that the HGN test could not be used to correlate the results with any particular blood-alcohol level, range of blood-alcohol levels, or level of impairment.
Ballard, 955 P.2d at 940.

Arizona

I. Evidentiary Admissibility

HGN is a scientific test that needs to satisfy the *Frye* standard of admissibility. State has shown that HGN satisfies the *Frye* standard. *State v. Superior Court (Blake)*, 718 P.2d 171, 181 (Ariz. 1986) (seminal case on the admissibility of HGN).

II. Police Officer Testimony Needed to Admit HGN Test Result

“The proper foundation for [admitting HGN test results] . . . includes a description of the officer's training, education, and experience in administering the test and showing that proper procedures were followed.”

Arizona ex. rel. Hamilton v. City Court of Mesa, 799 P.2d 855, 860 (Ariz. 1990).

See also *Arizona ex. Rel. McDougall v. Ricke*, 778 P.2d 1358, 1361 (Ariz. Ct. App. 1989).

III. Purpose and Limits of HGN

HGN test results are admissible to establish probable cause to arrest in a criminal hearing.
State v. Superior Court (Blake), 718 P.2d at 182.

“Where a chemical analysis has been conducted, the parties may introduce HGN test results in the form of estimates of BAC over .10% to challenge or corroborate that chemical analysis.”

Ricke, 778 P.2d at 1361.

When no chemical analysis is conducted, the use of HGN test results “is to be limited to showing a symptom or clue of impairment.”

Hamilton, 799 P.2d at 858.

Arkansas

I. Evidentiary Admissibility

Novel scientific evidence must meet the *Prater* (relevancy) standard for admissibility. Because law enforcement has used HGN for over thirty-five years, a *Prater* inquiry is not necessary as the test is not “novel” scientific evidence. *Whitson v. Arkansas*, 863 S.W.2d 794, 798 (Ark. 1993).

II. Police Officer Testimony Needed to Admit HGN Test Result

The Court did not address this issue.

III. Purpose and Limits of HGN

HGN may be admitted as evidence of impairment, but is not admissible to prove a specific BAC. *Whitson*, 863 S.W.2d at 798.

California

I. Evidentiary Admissibility

HGN is a scientific test and the *Kelly/Frye* “general acceptance” standard must be applied. *California v. Leahy*, 882 P.2d 321 (Cal. 1994). *California v. Joehnk*, 35 Cal. App. 4th 1488, 1493, 42 Cal. Rptr. 2d 6, 8 (Cal. Ct. App. 1995).

“...[A] consensus drawn from a typical cross-section of the relevant, qualified scientific community accepts the HGN testing procedures....”
Joehnk, 35 Cal. App. 4th at 1507, 42 Cal. Rptr. 2d at 17.

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer testimony is insufficient to establish “general acceptance in the relevant scientific community.” *Leahy*, 882 P.2d. at 609. Also see *People v. Williams*, 3 Cal. App. 4th 1326 (Cal. Ct. App. 1992).

Police officer can give opinion, based on HGN and other test results, that defendant was intoxicated. Furthermore, police officer must testify as to the administration and result of the test. *Joehnk*, 35 Cal. App. 4th at 1508, 42 Cal. Rptr. 2d at 18.

III. Purpose and Limits of HGN

HGN may be used, along with other scientific tests, as some evidence that defendant was impaired. *Joehnk*, 35 Cal. App. 4th at 1508, 42 Cal. Rptr. 2d at 17.

HGN test results may not be used to quantify the BAC level of the defendant. *California v. Loomis*, 156 Cal. App. 3d Supp. 1, 5-6, 203 Cal. Rptr. 767, 769-70 (1984).

Connecticut

I. Evidentiary Admissibility

Proper foundation must be established in accordance with *Daubert* prior to the introduction of HGN test results. *State v. Russo*, 773 A. 2d 965 (Conn. App. Ct. 2001).

Also see, *Connecticut v. Merritt*, 647 A.2d 1021, 1028 (Conn. App. Ct. 1994). HGN must meet the *Frye* test of admissibility. In this case, the state presented no evidence to meet its burden under the *Frye* test.

HGN satisfies the *Porter* standards and is admissible. (In *State v. Porter*, 698 A.2d 739 (1997), the Connecticut Supreme Court held the *Daubert* approach should govern the admissibility of scientific evidence and expressed factors to be considered in assessing evidence.)
Connecticut v. Carlson, 720 A.2d 886 (Conn. Super. Ct. 1998).

II. Police Officer Testimony Needed to Admit HGN Test Result

Must lay a proper foundation with a showing that the officer administering the test had the necessary qualifications and followed proper procedures. *Connecticut v. Merritt*, 647 A.2d 1021, 1028 (Conn. App. Ct. 1994).

III. Purpose and Limits of HGN

HGN test results can be used to establish probable cause to arrest in a criminal hearing. *Connecticut v. Royce*, 616 A.2d 284, 287 (Conn. App. Ct. 1992).

Delaware

I. Evidentiary Admissibility

HGN evidence is scientific and must satisfy the Delaware Rules of Evidence standard. *Delaware v. Ruthardt*, 680 A.2d 349, 356 (Del. Super. Ct. 1996).

HGN evidence is acceptable scientific testimony under the Delaware Rules of Evidence. *Ruthardt*, 680 A.2d at 362.

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer may be qualified as an expert to testify about the underlying scientific principles that correlate HGN and alcohol. Delaware police receiving three-day (twenty-four hour) instruction on HGN test administration are not qualified to do this.
Ruthardt, 680 A.2d at 361-62.

Police officer testimony about training and experience alone, without expert testimony, is not enough foundation to admit HGN test results.
Zimmerman v. Delaware, 693 A.2d 311, 314 (Del. 1997).

III. Purpose and Limits of HGN

HGN test results admissible to show probable cause in a criminal hearing.
Ruthardt, 680 A.2d at 355.

HGN test results admissible to show probable cause in a civil hearing.
Cantrell v. Division of Motor Vehicles, 1996 Del. Super. LEXIS 265 (Del. Super. Ct. Apr. 9, 1996).

HGN test results cannot be used to quantify the defendant's BAC. However, they can be used as substantive evidence that the defendant was "under the influence of intoxicating liquor."
Ruthardt, 680 A.2d at 361-62.

District of Columbia

I. Evidentiary Admissibility

The Court does not address this issue.

II. Police Officer Testimony Needed to Admit HGN Test Result

The Court used the case law of other jurisdictions to come to the conclusion that the Officer in the case could testify as an expert on the administration and the results of the HGN test. Therefore, in this case, the evidence was properly admitted using the Officer as the expert. See *Karamychev v. District of Columbia*, 772 A. 2d 806 (D.C. App. 2001).

III. Purpose and Limits of HGN

The Court has not yet addressed this issue.

Florida

I. Evidentiary Admissibility

The 3rd District Court found HGN to be a "quasi-scientific" test. Its application is dependent on a scientific proposition and requires a particular expertise outside the realm of common knowledge of the average person. It does not have to meet the *Frye* standard because HGN has been established and generally accepted in the relevant scientific community, and has been *Frye* tested in the legal community. The court took judicial notice that HGN is reliable based on supportive case law from other jurisdictions, numerous testifying witnesses and studies submitted. It is "no longer 'new or novel' and there is simply no need to reapply a *Frye* analysis."

Williams v. Florida, 710 So. 2d 24 (Fla. Dist. Ct. App. 1998).

The 4th District Court found HGN to be a scientific test. However, because it is not novel, the *Frye* standard is not applicable. However, “[e]ven if not involving a new scientific technique, evidence of scientific tests is admissible only after demonstration of the traditional predicates for scientific evidence including the test's general reliability, the qualifications of test administrators and technicians, and the meaning of the results.” Without this predicate, “the danger of unfair prejudice, confusion of issues or misleading the jury from admitting HGN test results outweighs any probative value.” The state did not establish the appropriate foundation for the admissibility of HGN test results.

Florida v. Meador, 674 So. 2d 826, 835 (Fla. Dist. Ct. App. 1996), *review denied*, 686 So. 2d 580 (Fla. 1996).

II. Police Officer Testimony Needed to Admit HGN Test Result

“We take judicial notice that HGN test results are generally accepted as reliable and thus are admissible into evidence once a proper foundation has been laid that the test was correctly administered by a qualified DRE [Drug Recognition Expert].”

Williams, 710 So. 2d at 32.

Also see *Bown v. Florida*, 745 So. 2d 1108 (Fl. Dist. Ct. App. 1999) which expands *Williams*. Allows trooper to explain HGN, but district requires confirmatory blood, breath or urine test before admitting HGN into evidence.

No evidence presented as to the police officer’s qualifications nor administration of the HGN test in this case.

Meador, 674 So. 2d at 835.

III. Purpose and Limits of HGN

The HGN test results alone, in the absence of a chemical analysis of blood, breath, or urine, are inadmissible to trigger the presumption provided by the DUI statute, and may not be used to establish a BAC of .08 percent or more.

Williams, 710 So. 2d at 36.

Georgia

I. Evidentiary Admissibility

The HGN test is admissible as a “scientifically reliable field sobriety evaluation” under the *Harper* “verifiable certainty” standard. *Manley v. Georgia*, 424 S.E.2d 818, 819-20 (Ga. Ct. App. 1992).

HGN testing is judicially noticed as a scientifically reliable test and therefore expert testimony is no longer required before the test results can be admitted.

Hawkins v. Georgia, 476 S.E.2d 803, 808-09 (Ga. Ct. App. 1996).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer, who received specialized training in DUI detection and worked with a DUI task force for two years, was permitted to testify that, in his opinion, defendant was under the influence. *Sieveling v. Georgia*, 469 S.E.2d 235, 219-20 (Ga. Ct. App. 1996).

A Police officer who testifies to the results, administration, and procedure of HGN may be cross-examined about those areas even if the state only offers him as a POST-certified officer. This is because the analysis and expertise needed for HGN go far beyond those needed by a lay person who observes the walk and turn or one leg stance tests. *James v. State*, 2003 WL 1540235 (Ga. App.).

III. Purpose and Limits of HGN

HGN test can be admitted to show that the defendant “was under the influence of alcohol to the extent that it was less safe for him to drive.” *Sieveling*, 469 S.E.2d at 219.

Hawaii

I. Evidentiary Admissibility

HGN is a scientific test. The HGN test is reliable under the Hawaii Rules of Evidence and admissible as “evidence that police had probable cause to believe that a defendant was DUI.” Judicial notice of the “validity of the principles underlying HGN testing and the reliability of HGN test results” is appropriate. HGN test results can be admitted into evidence if the officer administering the test was duly qualified to conduct the test and the test was performed properly. *Hawaii v. Ito*, 978 P.2d 191 (Haw. Ct. App. 1999).

II. Police Officer Testimony Needed to Admit HGN Test Result

Before HGN test results can be admitted into evidence in a particular case, however, it must be shown that (1) the officer administering the test was duly qualified to conduct and grade the test; and (2) the test was performed properly in the instant case. *Hawaii v. Ito*, 978 P.2d 191 (Haw. Ct. App. 1999), *See also Hawaii v. Toyomura*, 904 P.2d 893, 911 (Haw. 1992) and *Hawaii v. Montalbo*, 828 P.2d. 1274, 1281 (Haw. 1992).

III. Purpose and Limits of HGN

HGN test can be admitted as “evidence that police had probable cause to believe that a defendant was DUI.” *Hawaii v. Ito*, 978 P.2d 191 (Haw. Ct. App. 1999).

Idaho

I. Evidentiary Admissibility

HGN test results admitted under the Idaho Rules of Evidence. Rule 702 is the correct test in determining the admissibility of HGN. *State v. Gleason*, 844 P.2d 691, 694 (Idaho 1992).

II. Police Officer Testimony Needed to Admit HGN Test Result

Officer may testify as to administration of HGN test, but not correlation of HGN and BAC. *State v. Garrett*, 811 P.2d 488, 493 (Idaho 1991).

III. Purpose and Limits of HGN

“HGN test results may not be used at trial to establish the defendant's blood alcohol level . . . Although we note that in conjunction with other field sobriety tests, a positive HGN test result does supply probable cause for arrest, standing alone that result does not provide proof positive of DUI....” *Garrett*, 811 P.2d at 493.

HGN may be “admitted for the same purpose as other field sobriety test evidence -- a physical act on the part of [defendant] observed by the officer contributing to the cumulative portrait of [defendant] intimating intoxication in the officer's opinion.” *Gleason*, 844 P.2d at 695.

Illinois

I. Evidentiary Admissibility

HGN meets *Frye* standard of admissibility. *People v. Buening*, 592 N.E.2d 1222, 1227 (Ill. App. Ct. 1992).

Despite the ruling of the *Buening* appellate court, the Fourth District Court of Appeals declined to recognize HGN's general acceptance without a *Frye* hearing. The court criticized the *Buening* court for taking judicial notice of HGN's reliability based on the decisions of other jurisdictions. *People v. Kirk*, 681 N.E.2d 1073, 1077 (Ill. App. Ct. 1997).

The state supreme court held that the state was no longer required to show than an HGN test satisfied the Frye standard before introducing the results of the test into evidence. Absent proof by the defense that the HGN test was unsound, the State only had to show that the officer who gave the test was trained in the procedure and that the test was properly administered. *The People of the State of Illinois v. Linda Basler*, 740 N.E.2d 1 (Ill. 2000), 2000 Ill. LEXIS 1698 (Ill. 2000). (Plurality Opinion) According to Fourth Circuit, a *Frye* hearing must be held for HGN to be admitted. *People v. Herring*, 762 N.E.2d 1186.

II. Police Officer Testimony Needed to Admit HGN Test Result

“A proper foundation should consist of describing the officer's education and experience in administering the test and showing that the procedure was properly administered.”

Buening, 592 N.E.2d at 1227.

III. Purpose and Limits of HGN

HGN test results may be used to establish probable cause in a criminal hearing.

People v. Furness, 526 N.E.2d 947, 949 (Ill. App. Ct. 1988).

HGN test results admissible to show probable cause in a civil hearing.

People v. Hood, 638 N.E.2d 264, 274 (Ill. App. Ct. 1994).

HGN test results may be used “to prove that the defendant is under the influence of alcohol.”

Buening, 592 N.E.2d at 1228.

Indiana

I. Evidentiary Admissibility

Results of properly administered HGN test are admissible to show impairment which may be caused by alcohol and, when accompanied by other evidence, will be sufficient to establish probable cause to believe a person may be intoxicated. *Cooper v. Indiana*, 751 N.E.2d 900, 903 (Ind. Ct. App. Feb. 2002)

II. Police Officer Testimony Needed to Admit HGN Test Result

The proper foundation for admitting HGN evidence should consist of describing the officer's education and experience in administering the test and showing that the procedure was properly administered.

Cooper, 751 N.E.2d at 903.

The question of whether a trained officer might express an opinion that defendant was intoxicated based upon the results of field sobriety tests was not before the court, and thus, the court expressed no opinion concerning the admissibility of such testimony. *Cooper*, 751 N.E. 2d at 902, n. 1.

III. Purpose and Limits of HGN

HGN test results, when accompanied by other evidence, will be sufficient to establish probable cause that the person may be intoxicated. *Cooper*, 751 N.E.2d at 903.

Iowa

I. Evidentiary Admissibility

HGN admissible as a field test under the Iowa Rules of Evidence. “[T]estimony by a properly trained police officer with respect to the administration and results of the horizontal gaze nystagmus test are admissible without need for further scientific evidence.”

State v. Murphy, 451 N.W.2d 154, 158 (Iowa 1990).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer may testify about HGN test results under Rule 702 if the officer is properly trained to administer the test and objectively records the results.

Murphy, 451 N.W.2d at 158.

III. Purpose and Limits of HGN

HGN test results may be used as an indicator of intoxication. *Murphy*, 451 N.W.2d at 158.

Kansas

I. Evidentiary Admissibility

HGN must meet *Frye* standard of admissibility and a *Frye* hearing is required at the trial level. There was no *Frye* hearing conducted and the appellate court refused to make a determination based on the record it had. *State v. Witte*, 836 P.2d 1110, 1121 (Kan. 1992).

HGN test has not achieved general acceptance within the relevant scientific community and its exclusion was appropriate. *State v. Chastain*, 960 P.2d 756 (Kan. 1998).

II. Police Officer Testimony Needed to Admit HGN Test Result

The Court did not address this issue.

III. Purpose and Limits of HGN

The Court did not address this issue.

Kentucky

I. Evidentiary Admissibility

HGN test results admitted due to defendant’s failure to object.

Commonwealth v. Rhodes, 949 S.W.2d 621, 623 (Ky. Ct. App. 1996).

II. Police Officer Testimony Needed to Admit HGN Test Result

The Court did not address this issue.

III. Purpose and Limits of HGN

The Court did not address this issue.

Louisiana

I. Evidentiary Admissibility

HGN meets *Frye* standard of admissibility and with proper foundation may be admitted as evidence of intoxication.

State v. Breitung, 623 So. 2d 23, 25-6 (La. Ct. App. 1993).

State v. Regan, 601 So. 2d 5, 8 (La. Ct. App. 1992).

State v. Armstrong, 561 So. 2d 883, 887 (La. Ct. App. 1990).

The standard of admissibility for scientific evidence is currently the Louisiana Rules of Evidence. *State v. Foret*, 628 So. 2d 1116 (La. 1993).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer may testify as to training in HGN procedure, certification in the administration of HGN test and that the HGN test was properly administered. *Armstrong*, 561 So. 2d at 887.

III. Purpose and Limits of HGN

The HGN test may be used by the officer "to determine whether or not he [needs] to 'go any further' and proceed with other field tests."

Breitung, 623 So. 2d at 25.

HGN test results may be admitted as evidence of intoxication.

Armstrong, 561 So. 2d at 887.

Maine

I. Evidentiary Admissibility

Because the HGN test relies on greater scientific principles than other field sobriety tests, the reliability of the test must first be established. Either *Daubert* or *Frye* standard must be met.

State v. Taylor, 694 A.2d 907, 912 (Me. 1997).

The Maine Supreme Court took judicial notice of the reliability of the HGN test to detect impaired drivers.

Taylor, 694 A.2d at 910.

II. Police Officer Testimony Needed to Admit HGN Test Result

“A proper foundation shall consist of evidence that the officer or administrator of the HGN test is trained in the procedure and the [HGN] test was properly administered.”

Taylor, 694 A.2d at 912.

III. Purpose and Limits of HGN

HGN test results may only be used as “evidence of probable cause to arrest without a warrant or as circumstantial evidence of intoxication. The HGN test may not be used by an officer to quantify a particular blood alcohol level in an individual case.”

Taylor, 694 A.2d at 912.

Maryland

I. Evidentiary Admissibility

HGN is scientific and must satisfy the *Frye/Reed* standard of admissibility. The Court of Appeals took judicial notice of HGN's reliability and its acceptance in the relevant scientific communities.

Schultz v. State, 664 A.2d 60, 74 (Md. Ct. Spec. App. 1995).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer must be properly trained or certified to administer the HGN test. [NOTE: In *Schultz*, the police officer failed to articulate the training he received in HGN testing and the evidence was excluded.]

Schultz, 664 A.2d at 77.

III. Purpose and Limits of HGN

HGN testing may not be used to establish a specific blood alcohol level.

Wilson v. State, 723 A.2d 494 (Md. Ct. Spec. App. 1999).

Massachusetts

I. Evidentiary Admissibility

HGN is scientific and is admissible on a showing of either general acceptance in the scientific community or reliability of the scientific theory. See *Commonwealth v. Lanigan*, 641 N.E.2d 1342 (Mass. 1994). HGN test results are inadmissible until the Commonwealth introduces expert testimony to establish that the HGN test satisfies one of these two standards. *Commonwealth v. Sands*, 675 N.E.2d 370, 373 (Mass. 1997).

II. Police Officer Testimony Needed to Admit HGN Test Result

“[T]here must be a determination as to the qualification of the individual administering the HGN test and the appropriate procedure to be followed.” In this case there was no testimony as to these facts, thus denying the defendant the opportunity to challenge the officer’s qualifications and administration of the test. *Sands*, 675 N.E.2d at 373.

III. Purpose and Limits of HGN

The Court did not address this issue.

Michigan

I. Evidentiary Admissibility

Court found that HGN test is scientific evidence and is admissible under the *Frye* standard of admissibility.

State v. Berger, 551 N.W.2d 421, 424 (Mich. Ct. App. 1996).

II. Police Officer Testimony Needed to Admit HGN Test Result

Only foundation necessary for the introduction of HGN test results is evidence that the police officer properly performed the test and that the officer administering the test was qualified to perform it. *Berger*, 551 N.W.2d at 424.

III. Purpose and Limits of HGN

HGN test results are admissible to indicate the presence of alcohol.

Berger, 551 N.W.2d at 424 n.1.

Minnesota

I. Evidentiary Admissibility

Court found that HGN meets the *Frye* standard of admissibility.

State v. Klawitter, 518 N.W.2d 577, 585 (Minn. 1994).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officers must testify about their training in and experience with the HGN test.

See generally Klawitter, 518 N.W.2d at 585-86.

III. Purpose and Limits of HGN

HGN admissible as evidence of impairment as part of a Drug Evaluation Examination in the prosecution of a person charged with driving while under the influence of drugs.
See generally Klawitter, 518 N.W.2d at 585.

Mississippi

I. Evidentiary Admissibility

HGN is a scientific test. However, it is not generally accepted within the relevant scientific community and is inadmissible at trial in the State of Mississippi.
Young v. City of Brookhaven, 693 So.2d 1355, 1360-61 (Miss. 1997).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officers cannot testify about the correlation between the HGN test and precise blood alcohol content.
Young, 693 So.2d at 1361.

III. Purpose and Limits of HGN

HGN test results are admissible only to prove probable cause to arrest.
Young, 693 So.2d at 1361.

HGN test results cannot be used as scientific evidence to prove intoxication or as a mere showing of impairment. *Young*, 693 So.2d at 1361.

Missouri

I. Evidentiary Admissibility

Court found that HGN test meets the *Frye* standard of admissibility. *State v. Hill*, 865 S.W.2d 702, 704 (Mo. Ct. App. 1993), *rev'd on other grounds*, *State v. Carson*, 941 S.W.2d 518, 520 (Mo. 1997).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer must be adequately trained and able to properly administer the test.
Hill, 865 S.W.2d at 704.

See also, *Duffy v. Director of Revenue*, 966 S.W. 2d 372 (Mo. Ct. App. 1998). HGN not admitted at trial because the administering officer was not aware of how to properly score the test and interpret its results.

III. Purpose and Limits of HGN

HGN can be admitted as evidence of intoxication. *Hill*, 865 S.W.2d at 704.

Montana

I. Evidentiary Admissibility

Court found that HGN is neither new nor novel; thus, *Daubert* does not apply. Court still finds that HGN must meet the state's rules of evidence that are identical to the Federal Rules of Evidence. *Hulse v. DOJ, Motor Vehicle Div.*, 961 P.2d 75, 88 (Mont. 1998).

II. Police Officer Testimony Needed to Admit HGN Test Result

The court held that before an arresting officer may testify as to HGN results, a proper foundation must show that the officer was properly trained to administer the HGN test and that he administered the test in accordance with this training. Before the officer can testify as to the correlation between alcohol and nystagmus, a foundation must be established that the officer has special training in the underlying scientific basis of the HGN test. *Hulse*, 961 P.2d 75 (Mont. 1998).

See Also, *State v. Crawford*, 315 Mont. 480, 68 P.3d 848 (2003), in which the court ruled that the officer's credentials were sufficient to establish his expertise, along with evidence that he was previously qualified as an expert. They relied on *Russette* (2002 MT 200), stating that to establish an expert's qualifications, the proponent of the testimony must show that the expert has special training or education and adequate knowledge on which to base an opinion.

III. Purpose and Limits of HGN

HGN test results admissible as evidence of impairment. *State v. Clark*, 762 P.2d 853, 856 (Mont. 1988).

Nebraska

I. Evidentiary Admissibility

HGN meets the *Frye* standard for acceptance in the relevant scientific communities, and when the test is given in conjunction with other field sobriety tests, the results are admissible for the limited purpose of establishing impairment that may be caused by alcohol. *State v. Baue*, 607 N.W.2d 191 (Neb. 2000)

II. Police Officer Testimony Needed to Admit HGN Test Result

A police officer may testify to the results of HGN testing if it is shown that the officer has been adequately trained in the administration and assessment of the HGN test and has conducted the testing and assessment in accordance with that training. *State v. Baue*, 607 N.W.2d 191 (Neb. 2000)

III. Purpose and Limits of HGN

“Testimony concerning HGN is admissible on the issue of impairment, provided that the prosecution claims no greater reliability or weight for the HGN evidence than it does for evidence of the defendant's performance on any of the other standard field sobriety tests, and provided further that the prosecution makes no attempt to correlate the HGN test result with any particular blood-alcohol level, range of blood-alcohol levels, or level of impairment.”

State v. Baue, 607 N.W.2d 191 (Neb. 2000) (quoting *Ballard v. State*, 955 P.2d 931, 940 (Alaska App. 1998))

New Hampshire

I. Evidentiary Admissibility

In *State v. Dahoo* (Dec. 20, 2002), the N.H. Supreme Court ruled that the HGN test is admissible under N.H. Rule of Evidence 702 and *Daubert* for the limited purpose of providing circumstantial evidence of intoxication. HGN test is a scientifically reliable and valid test.

N.H. Supreme Court ruled their findings binding in *Dahoo* and that courts “will not be required to establish the scientific reliability of the HGN.”

II. Police Officer Testimony Needed to Admit HGN Test Result

“Since we have already determined that the scientific principles underlying the HGN test are reliable, a properly trained and qualified police officer may introduce the HGN test results at trial.” *State v. Dahoo*, 2002 N.H. LEXIS 179.

III. Purpose and Limits of HGN

“HGN results cannot be introduced at trial for the purpose of establishing a defendant’s BAC level....[T]he results are not sufficient alone to establish intoxication.” *State v. Dahoo*, *Id.*

New Jersey

I. Evidentiary Admissibility

In New Jersey, the party offering the results of a scientific procedure into evidence must comply with *Frye* and show that the procedure is generally accepted in the relevant scientific communities. A party may prove this general acceptance via “(1) testimony of knowledgeable experts[,] (2) authoritative scientific literature[, or] (3) [p]ersuasive judicial decision.” Based on the testimony of Dr. Marcelline Burns and Dr. Jack Richman, the Court found the HGN test to be generally accepted and the results thus admissible. The Court also noted the “significant number” of jurisdictions that have accepted the HGN test as admissible scientific evidence. *State v. Maida*, 2000 N.J. Super. LEXIS 276 (N.J. Super. Ct. Law Div. 2000).

***But See, *State v. Doriguzzi*, 760 A.2d 336 (N.J. Super. 2000)**, which held that HGN is scientific evidence that must meet Frye Standard. However, in each trial, sufficient foundation evidence must be laid by expert testimony to assure defendants that a conviction for DUI, when based in part on HGN testing, is grounded in reliable scientific data. In this case, the appellate court reversed defendant's conviction because at trial no such foundation was presented. The court found that because HGN testing has not achieved general acceptance in the community, it is not a matter of which a court can take judicial notice.

II. Police Officer Testimony Needed to Admit HGN Test Result

The Court did not address this issue.

III. Purpose and Limits of HGN

The Court found the HGN test admissible "as a reliable scientific indicator of likely intoxication."

New Mexico

I. Evidentiary Admissibility

HGN is a scientific test. New Mexico follows the *Daubert* standard, which requires a showing of reliability before scientific evidence can be admitted. The court held that a scientific expert must testify to the underlying scientific reliability of HGN and that a police officer cannot qualify as a scientific expert. Because the State failed to present sufficient evidence regarding the HGN test's reliability, the court remanded the case stating it would be appropriate for the trial court, on remand, to make the initial determination of whether HGN testing satisfies *Daubert*. In addition, the court found HGN to be "beyond common and general knowledge" and declined to take judicial notice of HGN reliability. *State v. Torres*, 976 P.2d 20 (N.M. 1999).

State v. Lasworth, 42 P.3d 844 (Ct. App. N.M. 2001), cert. denied (2002). Results of HGN test were inadmissible at trial (*State v. Torres*, 976 P.2d 20 (N.M. 1999)). The State needed to prove that HGN was both valid and reliable.

State called Dr. Marceline Burns as a witness (reliability) but did not call an expert in a discipline such as biology or medicine to explain how the amount of alcohol a person consumes correlates with HGN (validity).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officers can qualify as non-scientific experts based on their training and experience. Non-scientific experts may testify about the administration of the test and specific results of the test provided another scientific expert first establishes the reliability of the scientific principles underlying the test. In order to establish the "technical or specialized knowledge" required to qualify as an expert in the administration of the HGN test, "there must be a showing: (1) that the expert has the ability and training to administer the HGN test properly, and (2) that the expert did, in fact, administer the HGN test properly at the time and upon the person in question."

State v. Torres, 976 P.2d 20 (N.M. 1999).

State v. Lasworth, 42 P.3d 844 (Ct. App. N.M. 2001), cert. denied (2002). Court believed that state had to show that presence of HGN (BAC above .08) correlates with diminishment of driver's mental or physical driving skills (which it failed to do) & a correlation between presence of HGN and BAC above or below .08 (which it did through testimony of Dr. Burns). Court did not preclude use of results of HGN to establish probable cause for arrest or to establish grounds for administering a chemical BAC test.

III. Purpose and Limits of HGN

The Court did not address this issue.

New York

I. Evidentiary Admissibility

Prue holds that HGN test results are admissible under *Frye* standard of "general acceptance." *People v. Prue*, Indictment No. I-5-2001, Franklin County Court (November 2001).

In *Gallup*, the court said that it was only necessary to conduct a foundational inquiry into the techniques and the tester's qualifications for admissibility. *People v. Gallup*, Memorandum and order #13094, 302 A.D.2d 681 (3rd Dept)(2003).

The Court allowed the introduction of HGN and the results because it was properly administered and the burden of establishing that HGN is a reliable indicator of intoxication is generally accepted in the relevant scientific community was satisfied. *People v. William Miley*, NYLJ 12/6/02 p.30 col. 6 (Nassau Co. Ct 2002).

II. Police Officer Testimony Needed to Admit HGN Test Result

The People must lay a proper evidentiary foundation in order for HGN results to be admissible at trial.

III. Purpose and Limits of HGN

The Court held that HGN is generally accepted in the relevant scientific community as a reliable indicator of intoxication.

North Carolina

I. Evidentiary Admissibility

HGN is a scientific test. It "does not measure behavior a lay person would commonly associate with intoxication but rather represents specialized knowledge that must be presented to the jury by a qualified expert." As a result, "until there is sufficient scientifically reliable evidence as to the correlation between intoxication and nystagmus, it is improper to permit a lay person to testify as to the meaning of HGN test results." *State v. Helms*, 504 S.E.2d 293 (N.C. 1998).

II. Police Officer Testimony Needed to Admit HGN Test Result

Testimony of one police officer, whose training consisted of a “forty hour training class dealing with the HGN test”, was inadequate foundation for admission of HGN test results.

Helms, 504 S.E.2d 293 (N.C. 1998).

III. Purpose and Limits of HGN

HGN test results are evidence of impairment. *Helms*, 504 S.E.2d 293 (N.C. 1998).

North Dakota

I. Evidentiary Admissibility

Court found that HGN test is admissible as a standard field sobriety test.

City of Fargo v. McLaughlin, 512 N.W.2d 700, 706 (N.D. 1994).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer must testify as to training and experience and that the test was properly administered.

City of Fargo, 512 N.W.2d at 708.

III. Purpose and Limits of HGN

“ . . . HGN test results admissible only as circumstantial evidence of intoxication, and the officer may not attempt to quantify a specific BAC based upon the HGN test.”

City of Fargo, 512 N.W.2d at 708.

Ohio

I. Evidentiary Admissibility

HGN test is objective in nature and does not require an expert interpretation.

State v. Nagel, 506 N.E.2d 285, 286 (Ohio Ct. App. 1986).

Court determined that HGN was a reliable indicator of intoxication without specifically ruling on whether HGN meets *Frye* or some other standard of admissibility.

State v. Bresson, 554 N.E.2d 1330, 1334 (Ohio 1990).

Court held that SFSTs, including HGN, must be administered in *strict compliance* with NHTSA’s directives in order for the test results to be admissible. *State v. Homan*, 732 N.E.2d 952 (Ohio 2000).

However, the Ohio Supreme Court ruled that the Homan decision does not preclude officers from testifying to observations even if SFSTs are barred. *Ohio v. Schmitt*, 101 Ohio St. 3d 79, 2004.

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer need only testify to training in HGN procedure, knowledge of the test and ability to interpret results. *Bresson*, 554 N.E.2d at 1336.

III. Purpose and Limits of HGN

HGN can be used to establish probable cause to arrest and as substantive evidence of a defendant's guilt or innocence in a trial for DUI, but not to determine defendant's BAC. *Bresson*, 554 N.E.2d at 1336.

Oklahoma

I. Evidentiary Admissibility

HGN test results excluded because state failed to lay adequate foundation regarding HGN's scientific admissibility under the *Frye* standard of admissibility. Police officer's testimony alone was insufficient. *Yell v. State*, 856 P.2d 996, 996-97 (Okla. Crim. App. 1993).

The *Daubert* rationale replaces the *Frye* standard as the admissibility standard for scientific evidence. *Taylor v. State*, 889 P.2d 319, 328-29 (Okla. Crim. App. 1995).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer testified to training on how to administer HGN test and how the test was administered in this case. Officer also testified as to his training in analyzing HGN test results. *Yell*, 856 P.2d at 997.

III. Purpose and Limits of HGN

If HGN testing was found to satisfy the *Frye* standard of admissibility, HGN test results would be considered in the same manner as other field sobriety test results. HGN test results are inadmissible as scientific evidence creating a presumption of intoxication. *Yell*, 856 P.2d at 997.

Oregon

I. Evidentiary Admissibility

HGN test results are admissible under the Oregon Rules of Evidence. HGN test results are scientific in nature, are relevant in a DUI trial, and are not unfairly prejudicial to the defendant. *State v. O'Key*, 899 P.2d 663, 687 (Or. 1995).

II. Police Officer Testimony Needed to Admit HGN Test Result

“Admissibility is subject to a foundational showing that the officer who administered the test was properly qualified, that the test was administered properly, and that the test results were recorded accurately.” *O'Key*, 899 P.2d at 670.

III. Purpose and Limits of HGN

“... HGN test results are admissible to establish that a person was under the influence of intoxicating liquor, but is not admissible...to establish a person's BAC....” *O'Key*, 899 P.2d at 689-90.

Officer may not testify that, based on HGN test results, the defendant's BAC was over .10. *State v. Fiskien*, 909 P.2d 206, 207 (Or. Ct. App. 1996).

Pennsylvania

I. Evidentiary Admissibility

The state laid an inadequate foundation for the admissibility of HGN under the *Frye/Topa* standard. *Commonwealth v. Moore*, 635 A.2d 625, 629 (Pa. Super. Ct. 1993).
Commonwealth v. Apollo, 603 A.2d 1023, 1028 (Pa. Super. Ct. 1992).
Commonwealth v. Miller, 532 A.2d 1186, 1189-90 (Pa. Super. Ct. 1987).

Testimony of police officer is insufficient to establish scientific reliability of HGN test. *Moore*, 635 A.2d at 692.
Miller, 532 A.2d at 1189-90.

Testimony of behavioral optometrist did not establish general acceptance of HGN test. *Apollo*, 603 A.2d at 1027-28.

II. Police Officer Testimony Needed to Admit HGN Test Result

County detective certified as HGN instructor. Court did not comment on whether this would be enough foundation to allow the detective to testify about HGN test results. *Moore*, 635 A.2d 629.

Police officer had one-day course on HGN. Court did not comment on whether this would be enough foundation to allow the officer to testify about HGN test results. *Miller*, 603 A.2d at 1189.

III. Purpose and Limits of HGN

Not addressed by court.

South Carolina

I. Evidentiary Admissibility

HGN admissible in conjunction with other field sobriety tests. By implication, HGN is not regarded as a scientific test. *State v. Sullivan*, 426 S.E.2d 766, 769 (S.C. 1993).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer given twenty hours of HGN training. *Sullivan*, 426 S.E.2d at 769.

III. Purpose and Limits of HGN

HGN test results admissible “to elicit objective manifestations of soberness or insobriety . . . [E]vidence from HGN tests is not conclusive proof of DUI. A positive HGN test result is to be regarded as merely circumstantial evidence of DUI. Furthermore, HGN test shall not constitute evidence to establish a specific degree of blood alcohol content.” *Sullivan*, 426 S.E.2d at 769.

South Dakota

I. Evidentiary Admissibility

If it can be shown that a horizontal gaze nystagmus test was properly administered by a trained officer, such evidence should be admitted for a jury to consider at trial along with evidence of the other accepted field sobriety tests administered in South Dakota. *STATE v. HULLINGER*, 2002 SD 83; 649 N.W.2d 253 (S.D.S.Ct. 2002); 2002 S.D. LEXIS 99

II. Police Officer Testimony Needed to Admit HGN Test Result

Officer may testify if properly trained and test properly administered. At the pretrial hearing, the State presented three witnesses: 1) Monte Farnsworth, training director for the Office of Highway Safety at the Division of Criminal Investigation Law Enforcement Training Academy; 2) Deputy Ludwig; and 3) Dr. Larry Menning, optometrist and expert witness. South Dakota follows a *Daubert* standard in use of expert witnesses.

III. Purpose and Limits of HGN

The Court did not address this issue.

Tennessee

I. Evidentiary Admissibility

HGN is a scientific test. To be admissible at trial, such evidence must satisfy the requirements of Tenn. Rules of Evidence 702 and 703. State provided an inadequate amount of evidence to allow the court to conclude that HGN evidence meets this standard. *State v. Murphy*, 953 S.W.2d 200 (Tenn. 1997).

II. Police Officer Testimony Needed to Admit HGN Test Result

HGN must be offered through an expert witness. To qualify as an expert, a police officer must establish that he is qualified by his “knowledge, skill, experience, training or education” to provide expert testimony to “substantially assist the trier of fact to understand the evidence or determine a fact in issue.” Although the court did not rule out the possibility that the officer can be considered an expert, the court set a high level of proof. In this case, the court felt that although the officer had attended law enforcement training in DUI offender apprehension and the HGN test, this training was not enough to establish him as an expert. *State v. Grindstaff*, 1998 Tenn. Crim. App. Lexis 339 (March 23, 1998).

III. Purpose and Limits of HGN

The Court did not address this issue.

Texas

I. Evidentiary Admissibility

HGN admissible under the Texas Rules of Evidence. *Emerson v. State*, 880 S.W.2d 759, 769 (Tex. Crim. App. 1994).

II. Police Officer Testimony Needed to Admit HGN Test Result

A police officer must qualify as an expert on the HGN test, specifically concerning its administration and technique, before testifying about a defendant’s performance on the test. Proof that the police officer is certified in the administration of the HGN test by the Texas Commission on Law Enforcement Officer Standards and Education satisfies this requirement. *Emerson*, 880 S.W.2d at 769.

III. Purpose and Limits of HGN

HGN admissible to prove intoxication, but not accurate enough to prove precise BAC. *Emerson*, 880 S.W.2d at 769.

Utah

I. Evidentiary Admissibility

HGN test admissible as other field sobriety test. Court reserved judgment as to the scientific reliability of HGN. *Salt Lake City v. Garcia*, 912 P.2d 997, 1001 (Utah Ct. App. 1996).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer need only testify as to training, experience and observations when HGN admitted as a field test. *Garcia*, 912 P.2d at 1001.

III. Purpose and Limits of HGN

Admissible as any other field sobriety test. *Garcia*, 912 P.2d at 1000-01.

Washington

I. Evidentiary Admissibility

It is “undisputed” in the relevant scientific communities that “an intoxicated person will exhibit nystagmus”. HGN testing is not novel and has been used as a field sobriety test for “decades” and is administered the same whether investigating alcohol impairment or drug impairment. Thus, the use of HGN in drug and alcohol impaired driving cases is acceptable.

State v. Baity, 140 Wn.2d 1, 991 P.2d 1151 (Wash. 2000).

“[T]he *Frye* standard applies to the admission of evidence based on HGN testing, unless . . . the State is able to prove that it rests on scientific principles and uses techniques which are not ‘novel’ and are readily understandable by ordinary persons.” The state failed to present any evidence to this fact and the court declined to take judicial notice of HGN. *State v. Cissne*, 865 P.2d 564, 569 (Wash. Ct. App. 1994).

II. Police Officer Testimony Needed to Admit HGN Test Result

The Court did not address this issue.

III. Purpose and Limits of HGN

The Court did not address this issue.

West Virginia

I. Evidentiary Admissibility

The state did not present evidence for the court to reach “the question of whether the HGN test is sufficiently reliable to be admissible.” However, the court did conclude “that even if the reliability of the HGN test is demonstrated, an expert’s testimony as to a driver’s performance on the test is admissible only as evidence that the driver was under the influence. Estimates of blood alcohol content based on the HGN test are inadmissible.” *State v. Barker*, 366 S.E.2d 642, 646 (W. Va. 1988).

The West Virginia Supreme Court modified *State v. Barker* to the extent that the *Daubert* analysis of FRE 702 is applicable to the question of admissibility of expert testimony under the West Virginia Rules of Evidence Rule 702. *Wilt v. Buracker*, 443 S.E. 2d 196 (W.Va. 1993).

II. Police Officer Testimony Needed to Admit HGN Test Result

Police officer's training consisted of a one-day, eight-hour training session conducted by the state police. Officer testified to giving the HGN test about 100 times. Court did not reach question of whether this would be enough to allow the officer to testify about the HGN test results. *Barker*, 366 S.E.2d at 644.

III. Purpose and Limits of HGN

HGN test results admissible to show probable cause in a civil hearing. *Muscatell v. Cline*, 474 S.E.2d 518, 525 (W. Va. 1996). *Boley v. Cline*, 456 S.E.2d 38, 41 (W. Va. 1995).

“[I]f the reliability of the HGN test is demonstrated, an expert's testimony as to a driver's performance on the test is admissible only as evidence that the driver was under the influence,” the same as other field sobriety tests. *Barker*, 366 S.E.2d at 646.

Wisconsin

I. Evidentiary Admissibility

The court held that the HGN test results are admissible in this case because the test results were not the only evidence. The results were accompanied by the expert testimony of the officer. *State v. Zivcic*, 598 N.W.2d 565 (Wisc. Ct. App. 1999). See also, *State v. Maxon*, 633 N.W. 2d 278 (Wisc. Ct. App. 2001)

II. Police Officer Testimony Needed to Admit HGN Test Result

A police officer who is properly trained to administer and evaluate the HGN test can testify to the test results. A second expert witness is not needed. *State v. Zivcic*, 598 N.W.2d 565 (Wisc. Ct. App. 1999).

III. Purpose and Limits of HGN

The Court did not address this issue.

Wyoming

I. Evidentiary Admissibility

SFSTs, including HGN, are admissible to establish probable cause when administered in *substantial compliance* with NHTSA guidelines. Strict compliance is not necessary. The court took judicial notice of the number of states that allow HGN evidence on the basis of the “officer’s training, experience and ability to administer the test”. *Smith v. Wyoming*, 2000 Wyo. LEXIS 202 (Wyo. October 4, 2000).

II. Police Officer Testimony Needed to Admit HGN Test Result

A police officer that is properly trained to administer and evaluate the HGN test can testify to HGN results.

Smith v. Wyoming, 2000 Wyo. LEXIS 202 (Wyo. October 4, 2000).

III. Purpose and Limits of HGN

HGN test results are admissible to show probable cause.

Smith v. Wyoming, 2000 Wyo. LEXIS 202 (Wyo. October 4, 2000).

United States

I. Evidentiary Admissibility

U.S. V. Eric D. Horn, 185 F. Supp. 2d 530 (D. Maryland 2002) In this case, U.S. District Court in Maryland made the first application of the newly revised FRE 702 to the HGN and other SFSTs.

Results of properly administered WAT, OLS and HGN, SFSTs may be admitted into evidence in a DWI/DUI case only as circumstantial evidence of intoxication or impairment but not as direct evidence of specific BAC.

Officer must first establish his qualifications to administer the test - training and experience, not opinion about accuracy rate of test or causal connection between alcohol consumption and exaggerated HGN.

Government may prove causal connection by: judicial notice, expert testimony, or learned treatise. Horn may prove other causes by: judicial notice, cross-examination of state's expert, defense expert, or learned treatise.

U.S. V. Daras, 1998 WL 726748 (4th Cir. 1998)(*Unpublished opinion*). WAT and OLS were not scientific so no expert needed. Court would have applied *Daubert* to HGN test, but there was no need to because breathalyzer, WAT and OLS were sufficient.

HGN test was admitted as part of series of field tests. Its admission was not challenged on appeal.

U.S. v. Van Griffin, 874 F.2d 634 (9th Cir. 1989).

II. Police Officer Testimony Needed to Admit HGN Test Result

Foundation for HGN must address validity & reliability under FRE 702. In *Horn*, prosecution had a medical doctor and a police officer, but defense used behavioral psychologist to attack HGN literature of Dr. Marceline Burns and others.

III. Purpose and Limits of HGN

SFSTs may be admitted into evidence in a DWI/DUI case only as circumstantial evidence of intoxication or impairment but not as direct evidence of specific BAC. *Horn*.

Properly qualified, Officer may give opinion of intoxication or impairment by alcohol. *Horn*.

Note: The following states were not listed above due to a lack of case law discussion on HGN:

Colorado

Nevada

Rhode Island

Vermont(HGN was mentioned in the context of a refusal being admissible as evidence of probative guilt. *State v. Blouin*, 168 Vt. 119 (Vt. 1998)

Virginia

Last Update: Jan. 2004

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ATTACHMENT B

HORIZONTAL GAZE NYSTAGMUS STATE CHART SUMMARY

(Those states in bold have cases directly addressing the admissibility of HGN evidence. Under Section II, a blank box means that a court has not ruled on the issue.)

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA
I. Evidentiary admissibility.											
A. Not a scientific test - admissible as a field sobriety test.											
B. A scientific test - scientific standard not applicable.				X						X'	
C. A scientific test - meets scientific standard.		X	X		X			X			X
D. A scientific test - does not meet scientific standard.											
E. A scientific test - inadequate evidence presented to determine if HGN meets scientific standard.	X						X				
F. Scientific standard state follows:											
1. <i>Frye</i> (general acceptance)	X	X	X		X						
2. <i>Daubert/FRE</i> (reliability)							X	X			X
3. Other											
II. Police officer may testify about:											
A. HGN's scientific reliability at admissibility hearing.											
B. Correlation between HGN and alcohol at trial.											
C. HGN test results based on training & experience in administration of test.		YES	YES		YES			YES	YES	YES	YES
III. Purpose and limits of HGN test results.											
A. Probable cause determination in criminal hearing.		X	X				X	X			
B. Probable cause determination in civil hearing.								X			
C. Evidence of impairment.		X	X	X	X			X			X
D. Quantify BAC.											
E. Same evidentiary weight as other field tests.				X							

	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA
I. Evidentiary admissibility.											
A. Not a scientific test - admissible as a field sobriety test.					X						
B. A scientific test - scientific standard not applicable.											
C. A scientific test - meets scientific standard.	X	X	X					X	X	X	
D. A scientific test - does not meet scientific standard.											
E. A scientific test - inadequate evidence presented to determine if HGN meets scientific standard.						X					X
F. Scientific standard state follows:											
1. Frye (general acceptance)			X			X				X	
2. Daubert/FRE (reliability)	X	X			X			X	X		X
3. Other											
II. Police officer may testify about:											
A. HGN's scientific reliability at admissibility hearing.											
B. Correlation between HGN and alcohol at trial.		NO									
C. HGN test results based on training & experience in administration of test.	YES	YES	YES	YES	YES			YES	YES	YES	YES
III. Purpose and limits of HGN test results.											
A. Probable cause determination in criminal hearing.	X	X	X	X				X	X		
B. Probable cause determination in civil hearing.			X								
C. Evidence of impairment.		X	X	X	X			X	X		
D. Quantify BAC.											
E. Same evidentiary weight as other field tests.		X			X						

	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY
I. Evidentiary admissibility.											
A. Not a scientific test - admissible as a field sobriety test.											
B. A scientific test - scientific standard not applicable.				X					X		
C. A scientific test - meets scientific standard.	X	X		X							X
D. A scientific test - does not meet scientific standard.			X					X			
E. A scientific test - inadequate evidence presented to determine if HGN meets scientific standard.						X				X	
F. Scientific standard state follows:											
1. <i>Frye</i> (general acceptance)	X	X	X	X		X			X		X
2. <i>Daubert/FRE</i> (reliability)								X		X	
3. Other											
II. Police officer may testify about:											
A. HGN's scientific reliability at admissibility hearing.						NO				NO	
B. Correlation between HGN and alcohol at trial.			NO								
C. HGN test results based on training & experience in administration of test.	YES	YES		YES	YES					YES	
III. Purpose and limits of HGN test results.											
A. Probable cause determination in criminal hearing.			X					X			
B. Probable cause determination in civil hearing.											
C. Evidence of impairment.	X	X		X	X						
D. Quantify BAC.											
E. Same evidentiary weight as other field tests.											

	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX
I. Evidentiary admissibility.											
A. Not a scientific test - admissible as a field sobriety test.		X	X					X	X		
B. A scientific test - scientific standard not applicable.											
C. A scientific test - meets scientific standard.					X						X
D. A scientific test - does not meet scientific standard.											
E. A scientific test - inadequate evidence presented to determine if HGN meets scientific standard.	X			X		X				X	
F. Scientific standard state follows:											
1. <i>Frye</i> (general acceptance)						X					
2. <i>Daubert/FRE</i> (reliability)	X			X	X						X
3. Other										X	
II. Police officer may testify about:											
A. HGN's scientific reliability at admissibility hearing.	NO					NO					
B. Correlation between HGN and alcohol at trial.	YES										
C. HGN test results based on training & experience in administration of test.	YES	YES	YES	YES	YES			YES	YES		YES
III. Purpose and limits of HGN test results.											
A. Probable cause determination in criminal hearing.			X						X		
B. Probable cause determination in civil hearing.											
C. Evidence of impairment.	X	X	X		X			X			X
D. Quantify BAC.											
E. Same evidentiary weight as other field tests.		X	X	X				X			

	UT	VT	VA	WA	WV	WI	WY	US	TOTALS
I. Evidentiary admissibility.									
A. Not a scientific test - admissible as a field sobriety test.	X					X	X		8
B. A scientific test - scientific standard not applicable.									4
C. A scientific test - meets scientific standard.									17
D. A scientific test - does not meet scientific standard.			X						3
E. A scientific test - inadequate evidence presented to determine if HGN meets scientific standard.					X			X	12
F. Scientific standard state follows:									
1. Frye (general acceptance)			X						16
2. Dauber/FRE (reliability)					X			X	16
3. Other									2
II. Police officer may testify about:									
A. HGN's scientific reliability at admissibility hearing.					NO				
B. Correlation between HGN and alcohol at trial.									
C. HGN test results based on training & experience in administration of test.	YES					YES	YES		
III. Purpose and limits of HGN test results.									
A. Probable cause determination in criminal hearing.							X		15
B. Probable cause determination in civil hearing.					X				3
C. Evidence of impairment.					X	X			24
D. Quantify BAC.									
E. Same evidentiary weight as other field tests.	X				X				9

Last update 11/03 For future updates, please contact the National Traffic Law Center, 99 Canal Center Plaza, Suite 510, Alexandria, Virginia, 22314
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⁰ The 3rd District found HGN to be a “quasi-scientific” test. The court held HGN was established and generally accepted in the relevant scientific community and, therefore, it did not have to meet the *Frye* standard. *Williams v. State*, 710 So.2d 24 (Fla. 3rd Dist. Ct. 1998).

ATTACHMENT B

The Detection of DWI at BACs Below 0.10

Final Report

Submitted to:
U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

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12 September 1997

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Executive Summary

This report documents the research activities and presents the results of a study conducted for the National Highway Traffic Safety Administration (NHTSA) to identify driving and other behavioral cues that are associated with blood alcohol concentrations (BACs) below the 0.10 level. The ultimate objective of the research has been to develop training materials to assist law enforcement officers in the accurate detection of motorists who are driving while impaired (DWI).

Description of the Research

The research and development project was composed of 13 major project tasks, conducted in two phases. During Phase I, a work plan was developed to guide all subsequent tasks, a comprehensive review of the low BAC literature was performed, interviews were conducted with DWI experts from across the United States, a data base of low BAC arrest reports was assembled, and two field studies were conducted. The analysis of archival, interview, arrest report, and field data collected by observers led to the identification of 34 driving cues and 10 post-stop cues for further evaluation.

Five law enforcement agencies participated in the second of the field studies, known as the preliminary field study, by recording the driving and post-stop cues observed for all enforcement stops, regardless of the disposition of the stop; the BACs of all drivers who exhibited objective signs of having consumed alcohol also were recorded. By collecting data about all enforcement stops that were made, it was possible to calculate the proportions of the stops in which specific cues were found in association with various BAC levels. All archival, interview, and field study data were analyzed, and recommendations for draft training materials were developed, as the final Phase I task.

A draft DWI detection guide, training booklet, and training video were developed based on the results of the preliminary field study; the materials included 24 driving and 10 post-stop cues. Law enforcement agencies representing 11 of the 15 states with 0.08 BAC limits for DWI were recruited to participate in the Phase II validation study. Participating officers reviewed the video and printed training materials, then completed a data collection form following every enforcement stop made, regardless of the disposition of the stop; the same form was used as in the preliminary field study, conducted previously. The validation study data were analyzed and a final version of the training materials, and this technical report, were prepared as the final Phase II project tasks.

Data were collected during more than 12,000 enforcement stops during this research project. The stops were made by several hundred participating officers, representing more than 50 law enforcement agencies from across the United States.

Results

The results of the preliminary field study largely supported the 20 cues at the 0.08 BAC level that were presented on the original NHTSA DWI detection guide, which was developed in 1980 for the 0.10 BAC level. However, no cues were found that reliably predicted BACs below 0.08; that is, the cues that are key predictors of DWI at the 0.08 BAC level failed to emerge with useful probabilities at BAC levels below 0.08. The results of the Phase II validation study further confirmed the key cues that were contained in the original NHTSA guide, a few additional driving cues, and the 10 post-stop cues. The DWI driving cues were presented in functional categories in both the printed materials and the training video: Problems Maintaining Proper Lane Position, Speed and Braking Problems, Vigilance Problems, and Judgment Problems.

Slight modifications were made to the training materials, based on the results of the Phase II validation study. The final version of the DWI detection guide is reproduced below.

DWI DETECTION GUIDE	
<i>Weaving plus any other cue: p = at least .65</i> <i>Any two cues: p = at least .50</i>	
PROBLEMS MAINTAINING PROPER LANE POSITION	
<ul style="list-style-type: none">• Weaving• Weaving across lane lines p=.50-.75• Straddling a lane line• Swerving• Turning with a wide radius• Drifting• Almost striking a vehicle or other object	
SPEED AND BRAKING PROBLEMS	p=.45-.70
<ul style="list-style-type: none">• Stopping problems (too far, too short, or too jerky)• Accelerating or decelerating for no apparent reason• Varying speed• Slow speed (10+ mph under limit)	
VIGILANCE PROBLEMS	p=.55-.65
<ul style="list-style-type: none">• Driving in opposing lanes or wrong way on one-way• Slow response to traffic signals• Slow or failure to respond to officer's signals• Stopping in lane for no apparent reason• Driving without headlights at night*• Failure to signal or signal inconsistent with action*	
JUDGMENT PROBLEMS	p=.35-.90
<ul style="list-style-type: none">• Following too closely• Improper or unsafe lane change• Illegal or improper turn (too fast, jerky, sharp, etc.)• Driving on other than the designated roadway• Stopping inappropriately in response to officer• Inappropriate or unusual behavior (throwing, arguing, etc.)• Appearing to be impaired	
POST STOP CUES	p≥.85
<ul style="list-style-type: none">• Difficulty with motor vehicle controls• Difficulty exiting the vehicle• Fumbling with driver's license or registration• Repeating questions or comments• Swaying, unsteady, or balance problems• Leaning on the vehicle or other object• Slurred speech• Slow to respond to officer/officer must repeat• Provides incorrect information, changes answers• Odor of alcoholic beverage from the driver	
<hr/>	
*p≥.50 when combined with any other cue: <ul style="list-style-type: none">• Driving without headlights at night• Failure to signal or signal inconsistent with action	
The probability of detecting DWI by random traffic enforcement stops at night has been found to be about three percent (.03).	

DWI Cues At BACs Below 0.10 *A Review of the Literature*

The purpose of this review is to prepare information for the research team concerning the determination and validation of visual cues for the detection of motorists who are driving while impaired (DWI) with blood alcohol concentrations (BACs) below 0.10.

BACKGROUND

An emphasis on DWI enforcement during the past decade has been a factor in the significant improvement in traffic safety, as represented by declining fatal and alcohol-involved crash rates. Despite the significant improvements in traffic safety during the past 30 years, particularly during the past decade, more than 40,000 people still perish each year as a result of motor vehicle crashes. The current US traffic fatality rate amount to a daily average of about 126 people – the equivalent of a Boeing 727 crashing every day of the year.

The economic losses from alcohol involved crashes are staggering at an estimated \$21 to \$24 billion annually (for property damage alone) (Miller, 1992). In 1990, the combined cost of all traffic collisions was \$137.5 billion, including 28 million vehicles damaged, 5.4 million people injured, and 44,531 lives lost (Blincoe & Faigin, 1992).

A reduction in the number of alcohol-involved crashes and the number of alcohol-impaired drivers on the road is a top priority. Numerous studies indicate that when DWI enforcement levels are increased, the number of alcohol involved collisions decrease (Hause, Chavez, Hannon, Matheson, 1977; Voas & Haus, 1987; Blomberg, 1992). However, many officers are unable to identify legally impaired drivers from their driving behavior, or even during the brief interview customary at a sobriety checkpoint. For example, in the Netherlands, as many as 32 percent of drivers with BACs above .05 might escape detection at checkpoint, when officers have the advantage of a face-to-face exchange (Gundy & Verschuur, 1986).

There are at least two clear solutions to the low BAC DWI detection problem: 1) Random Breath Testing (RBT) to objectively detect drivers operating above the legal limit; and, 2) increased officer sensitivity to behavioral cues exhibited at lower BAC levels. Although the RBT method is operating effectively in Australia (McCaul & McLean, 1990), it is probably not an appropriate program for the United States. Fourth Amendment rights currently prevent random breath testing; for example, testing only can occur at a sobriety checkpoint after probable cause has been established (Voas, 1991). Thus, the most likely solution to improving detection of low BACs is to improve the DWI detection ability of law enforcement officers.

In 1980, Harris et al. conducted NHTSA sponsored research to determine the behavioral cues for on-the-road detection of DWI. The final product of this Anacapa Sciences' study was a DWI Detection Guide providing 20 visual cues commonly exhibited by impaired drivers with a BAC equal to or greater than 0.10. The Guide provides the probability for each cue of discriminating between Driving While Impaired (DWI) and Driving While Sober (DWS). The DWI Detection Guide and supporting training materials are part of the DWI Detection and Standardized Field Sobriety Testing course currently distributed by NHTSA (NHTSA, 1990). Surprisingly, although there has been a limited evaluation of the DWI Detection Guide (Vingilis et al., 1983), the only additional research of this type that has been performed since 1980 was a NHTSA sponsored study to develop a motorcycle DWI detection guide (Stuster, 1993).

It is legitimate to question whether a cue guide calibrated for the 0.08 level would appear very similar if not identical to the DWI detection guide developed nearly 20 years ago by Anacapa Sciences. A new, lower BAC limit DWI detection guide might ultimately appear similar to the old guide, but the research is important for at least three reasons.

1. The research that supported the development of the DWI Detection Guide was conducted 18 years ago. Many things have changed considerably since the late 1970s. It is not unreasonable to suspect that some fundamental changes might be reflected in the behavioral cues associated with driver impairment. And, there *might* be behaviors that correlate more closely with lower than higher BACs.
2. At the very least, a periodic reprise of a research and development effort is warranted if the work involved important public policy and enforcement implications. The DWI Detection Guide and training program have not been reviewed or revised since they were developed. Increased awareness of DWI issues and public support for DWI enforcement in recent years contribute to the need to upgrade and make current an important decision aid and training program that is used by law enforcement personnel from across the U.S.
3. It is essential for researchers to view the issue of DWI detection from the perspective of an officer on patrol. A patrol officer wants to know the likelihood that a specific driver behavior is indicative of DWI at the (new) 0.08 level *or above*, or at the 0.04 level *or above*. The "or above" is important because as the BAC level is reduced the probability that a given cue is predictive of DWI rises – because all of the *or aboves* are included in the calculation. From the officer's perspective (in an 0.08 jurisdiction) it is usually irrelevant if the motorist is 0.08, 0.10, or some higher value – it is only important to determine that the motorist is 0.08 *or above*.

Although the modal BAC limit for DWI continues to be 0.10 in the United States, there is a definite trend towards lowering the limit. When the current project started in 1993, only five states had adopted a 0.08 percent legal limit, but by the conclusion of the research the number of states with a 0.08 limit had increased to 15. Further, the Commercial Motor Vehicle Safety Act of 1986 established a nationwide maximum BAC of 0.04 percent for all commercial drivers. In addition, several states have adopted a zero tolerance statute or a 0.02 percent BAC limit for youthful drivers. Studies that suggest low officer DWI detection rates, and improved low BAC detection when using passive alcohol sensors (Kiger et al., 1983; Jones et al., 1985; Vingilis and Gingilis, 1985), suggest the need for a DWI detection guide for levels below 0.10 percent BAC.

RELEVANT RESEARCH

The trend of lowering BAC limits is a reflection of the growing body of evidence that alcohol begins to impair nervous function at BAC levels below 0.10 percent. Moskowitz and Robinson (1988) conducted a comprehensive literature review concerning the effects of alcohol on driving behavior, emphasizing the BACs at which impairment begins. A majority of studies found impairment at low BACs (below 0.07). Many studies found impairment at the 0.04 level and below.

Moskowitz and Robinson computed BACs for all studies, even those that included BAC data in the original report. Often these calculations resulted in higher BACs than were reported in the original study, probably because the older devices were inaccurate. The calculations also allowed for gender differences (by taking into account the different percentages of body water in females and males). If anything, the calculations performed by Moskowitz and Robinson lead to an over-estimation of BAC level. If this is the case, the impairments they report at various BAC levels actually might occur at lower BACs than reported later in this review.

In the Moskowitz study, factors were grouped into behavioral categories pertinent to driving. The following categories were affected at 0.05 percent BAC.

- Reaction time
- Divided attention
- Visual functions
- Tracking
- Information processing
- Perception

Driving behaviors that showed impairment at 0.08 percent to as low as 0.03 percent included:

- Steering
- Braking
- Speed control
- Lane tracking
- Gear changing
- Speed judgment
- Distance judgment

In addition, tasks requiring divided attention showed impairment at BACs as low as 0.02 percent. These driver behaviors are listed in the table presented at the end of this section; the table provides a comprehensive inventory of all DWI cues identified during the current review.

Although the Moskowitz and Robinson review is the most extensive source of information available about driver impairment at various BAC levels, several other studies identify potential cues for DWI detection. In an Anacapa Sciences' study conducted for the Insurance Institute for Highway Safety, Casey and Stuster (1982) identified the following 12 risky driving behaviors of both automobile and motorcycle operators.

- Running stop sign or traffic light
- Unsafe passing due to oncoming traffic
- Unsafe turn in front of oncoming or opposing traffic
- Following too closely
- Unsafe lane change or unsafe merging
- Weaving through traffic
- Crossing a double line in order to pass
- Passing on the right
- Excessive speed for conditions
- Improper turn
- Splitting traffic
- Stunts

Similarly, Treat et al. (1980), in a study of risky driving actions and their involvement in traffic collisions, identified the following 13 Unsafe Driving Actions.

- Pulling out in front of traffic
- Following behavior
- Speeding: Absolute/Over limit
- Speeding: Relative/For traffic conditions
- Turning in front of oncoming traffic
- Running stop sign or light
- Changing lanes or merging in front of traffic
- Driving left of center or on centerline
- Passing unsafely
- Driving off road to right
- Backing unsafely
- Turning too wide or too sharp
- Turning from wrong lane

Several of these unsafe driving actions also have been identified as indicators of driving while impaired in the Harris et al (1980) study: *following too closely, fast speed* (deleted from the final version of the DWI Detection Guide), *failing to respond to traffic signals or signs*, and *driving into opposing or crossing traffic*.

Additionally, several studies suggest stopping method as a primary difference between DWI and unimpaired driving (Attwood et al., 1980; Bragg et al., 1981; Compton, 1985). Differences included *braking sooner* and *stopping jerkily* when under the influence of alcohol.

In a study developing and validating the sobriety field test battery, Tharp, Burns, and Moskowitz (1981) reported the reasons for stopping suspected alcohol impaired drivers. The most common reasons were traffic infractions (e.g., speeding, failing to stop) rather than non-infraction driving behaviors such as weaving or drifting. There is significant overlap between the behaviors reported by Tharp et al. (1981) and the DWI on-the-road detection cues identified by Harris et al. (1980).

In a study evaluating screening procedures for police officers at sobriety checkpoints, cues noticed by officers were correlated with the BAC levels of the drivers. Compton (1985) found significant differences in stopping behavior. In general, drivers stopped smoothly at low BAC levels (0-0.04) and "jerkily" at higher BAC levels (0.10-0.15). Drivers with a low BAC did not serve, those with higher BACs (greater than 0.10) did. Cues identified by Compton that related to driving and stopping behaviors, and personal appearance, are presented in the comprehensive table at the end of this review. The cues identified in the Compton study include personal appearance variables not previously identified in the 1980 Harris et al. study. These cues include:

- Odor of alcohol
- Face flushed
- Speech slurred
- Eyes dilated
- Demeanor
- Hair disheveled
- Poor dexterity
- Clothes disheveled

Of these personal appearance variables, *odor of alcohol, face flushed, and eyes dilated* appear to be the most promising for DWI detection at low BAC levels.

CONCLUSIONS

The objective of the current study is to develop an appropriate set of behaviors that can be used by field officers to accurately identify motorists who are driving while impaired at the 0.08 level, and to determine if cues are available that predict 0.04 and 0.02 BAC levels. No sources were identified that specifically identify behavioral cues for alcohol impairment at the lower levels. However, a table of potentially applicable behaviors has been prepared, based on a comprehensive review of the literature. This list, presented in the following table, includes all behaviors previously discussed in this review, and shows the considerable agreement among the studies. The behaviors identified here later will be combined with cues identified during interviews with DWI patrol experts, and from the archival research. The resulting comprehensive inventory of DWI cues then will be used to develop data collection forms for the first of the field studies.

SCIENTIFIC PUBLICATIONS AND RESEARCH
REPORTS ADDRESSING NYSTAGMUS

1. Aschan, Bergstedt, Goldberg & Laurell, Positional Nystagmus in Man During and After Alcohol Intoxication, 17 Q.J. OF STUD. ON ALCOHOL, Sept. 1956, at 381. Study distinguishing two types of alcohol-induced nystagmus, PAN (positional alcoholic nystagmus) I and PAN II, found intensity of PAN I, with onset about one-half hour after alcohol ingestion, was proportional to amount of alcohol taken.
2. Aschan, Different Types of Alcohol Nystagmus, 140 ACTA OTOLARYNGOL SUPP. 69 (Sweden 1958) ("From a medico-legal viewpoint, simultaneous recording of AGN (Alcohol Gaze Nystagmus) and PAN (positional alcoholic nystagmus) should be of value, since it will show in which phase the patient's blood alcohol curve is...").
3. Rashbass, The Relationship Between Saccadic and Smooth Tracking Eye Movements, 159 J. PHYSIOL. 326 (1961) (barbiturate drugs interfere with smooth tracking eye movement).
4. Goldberg, Effects and After-Effects of Alcohol, Tranquilizers and Fatigue on Ocular Phenomena, ALCOHOL AND ROAD TRAFFIC 123 (1963) (of different types of nystagmus, alcohol gaze nystagmus is the most easily observed).
5. Murphree, Price & Greenberg, Effect of Congeners in Alcohol Beverages on the Incidence of Nystagmus, 27 Q.J. OF STUD. ON ALCOHOL, June 1966, at 201 (positional nystagmus is a consistent, sensitive indicator of alcohol intoxication).
6. Fregly, Bergstedt & Graybiel, Relationships Between Blood Alcohol, Positional Alcohol Nystagmus and Postural Equilibrium, 28 Q.J. OF STUD. ON ALCOHOL, March 1967, at 11, 17 (declines from baseline performance levels correlated with peak PAN I responses and peak blood alcohol levels).
7. Misoi, Hishida & Maeba, Diagnosis of Alcohol Intoxication by the Optokinetic Test, 30 Q.J. OF STUD. ON ALCOHOL 1 (March-June 1969) (optokinetic nystagmus, ocular adaptation to movement of object before eyes, can also be used to detect central nervous system impairment caused by alcohol. Optokinetic nystagmus is inhibited at BAC of only .051 percent and can be detected by optokinetic nystagmus test. Before dosage subjects could follow a speed of 90 degrees per second; after, less than 70 degrees per second).

8. Nathan, Zare, Ferneau & Lowenstein, Effects of Congener Differences in Alcohol Beverages on the Behavior of Alcoholics, 5 Q.J. OF STUD. ON ALCOHOL SUPP., May 1970, at 87 (abstract available on DIALOG, file 11: Psychinfo 1967-85) (incidence of nystagmus and other nystagmoid movements increased with duration of drinking).
9. Oosterveld, Meineri & Paolucci, Quantitative Effect of Linear Acceleration on Positional Alcohol Nystagmus, 45 AEROSPACE MEDICINE, July 1974, at 695 (G-loading brings about PAN even when subject has not ingested alcohol; however when subjects ingested alcohol, no PAN was found when subjects were in supine position, even with G-force at 3).
10. Penttila, Lehti & Lonnqvist, Nystagmus and Disturbances in Psychomotor Functions Induced by Psychotropic Drug Therapy, 1974 PSYCHIAT. FENN. 315 (abstract available on DIALOG, file 173: Embase 1975-79) (psychotropic drugs induce nystagmus).
11. Wilkinson, Kime & Purnell, Alcohol and Human Eye Movement, 97 BRAIN 785 (1974) (oral dose of ethyl alcohol impaired smooth pursuit eye movement of all human subjects).
12. Aschan & Bergstedt, Positional Alcoholic Nystagmus in Man Following Repeated Alcohol Doses, 80 ACTA OTOLARYNGOL SUPP. 330 (Sweden 1975) (abstract available on DIALOG, file 173: Embase 1975-79) (degree of intoxication influences both PAN I and PAN II).
13. Lehti, The Effect of Blood Alcohol Concentration on the Onset of Gaze Nystagmus, 136 BLUTALKOHOL 414 (West Germany 1976) (abstract available on DIALOG, file 173: Embase 1975-79) (noted a statistically highly significant correlation between BAC and the angle of onset of nystagmus with respect to the midpoint of the field of vision).
14. Zyo, Medico-legal and Psychiatric Studies on the Alcohol Intoxicated Offender, 30 JAPANESE J. OF LEGAL MED., No. 3, 1976, at 169 (abstract available on DIALOG, file 21: National Criminal Justice Reference Service 1972-85) (recommends use of nystagmus test to determine somatic and mental symptoms of alcohol intoxication as well as BAC).
15. Burns & Moskowitz, Psychophysical Tests for DWI Arrest, U.S. Dept. of Transportation Rep. No. DOT-HS-802-424 (1977) (recommended the three-test battery developed by SCRI (one-leg stand, walk and turn, and HGN) to aid officers in discriminating BAC level).

16. Umeda & Sakata, Alcohol and the Oculomotor System, 87 ANNALS OF OTOLOGY, RHINOLOGY & LARYNGOLOGY, May-June 1978, at 392 (in volunteers whose "caloric eye tracking pattern" (CETP) was normal before alcohol intake, influence of alcohol on oculomotor system appeared consistently in the following order: (1) abnormality of CETP, (2) positional alcohol nystagmus, (3) abnormality of eye tracking pattern, (4) alcohol gaze nystagmus).
17. Baloh, Sharma, Moskowitz & Griffith, Effect of Alcohol and Marijuana on Eye Movements, 50 AVIAT. SPACE ENVIRON. MED., Jan 1979, at 18 (abstract available on DIALOG, file 153: Medline 1979-79) (smooth pursuit eye movement effects of alcohol overshadowed those of marijuana).
18. Savolainen, Riihimaki, Vaheri & Linnoila, Effects of Xylene and Alcohol on Vestibular and Visual Functions in Man, SCAND. J. WORK ENVIRON. HEALTH 94 (Sweden 1980) (abstract available on DIALOG, file 172: Embase 1980-81 on file 5: Biosis Previews 1981-86) (the effects of alcohol on vestibular functions (e.g., positional nystagmus) were dose-dependent).
19. Tharp, Burns & Moskowitz, Circadian Effects on Alcohol Gaze Nystagmus (paper presented at 20th annual meeting of Society for Psychophysiological Research), abstract in 18 PSYCHOPHYSIOLOGY, March 1981 (highly significant correlation between angle of onset of AGN and BAC).
20. Tharp, Burns & Moskowitz, Development and Field Test of Psychophysical Tests for DWI Arrests, U.S. Dept. of Transportation Rep. No. DOT-HS-805-864 (1981) (standardized procedures for administering and scoring the SCRI three-test battery; participating officers able to classify 81% of volunteers above or below .10).
21. Church & Williams, Dose- and Time-Dependent Effects of Ethanol, 54 ELECTROENCEPHALOGRAPHY & CLIN. NEUROPHYSIOL., Aug. 1982, at 161 (abstract available on DIALOG, file 11: Psychinfo 1967-85 or file 72: Embase 1982-85) (positional alcohol nystagmus increased with dose levels of ethanol).
22. Anderson, Schweitz & Snyder, Field Evaluation of Behavioral Test Battery for DWI, U.S. Dept. of Transportation Rep. No. DOT-HS-806-475 (1983) (field evaluation of the field sobriety test battery (HGN, one-leg stand, and walk and turn) conducted by police officers from four jurisdictions indicated that the battery was approximately 80% effective in determining BAC above and below .10 percent).

23. Barnes, The Effects of Ethyl Alcohol on Visual Pursuit and Suppression of the Vestibulo-Ocular Reflex, 406 ACTA OTOLARYNGOL SUPP. 161 (Sweden 1984) (ethyl alcohol disrupted visual pursuit eye movement by increasing number of nystagmic "catch-up saccades").
24. Compton, Use of the Gaze Nystagmus Test to Screen Drivers at DWI Sobriety Checkpoints, U.S. Dept. of Transportation (1984) (field evaluation of HGN test administered to drivers through car window in approximately 40 seconds: "the nystagmus test scored identified 95% of the impaired drivers" at 2; 15% false positive for sober drivers, id.).
25. Helzer, Detection DUIs Through the Use of Nystagmus, LAW AND ORDER, Oct. 1984, at 93 (nystagmus is "a powerful tool for officers to use at roadside to determine BAC of stopped drivers...(O)fficers can learn to estimate BACs to within an average of 0.02 percent of chemical test readings." Id. at 94).
26. Nuotto, Palva & Seppala, Naloxone Ethanol Interaction in Experimental and Clinical Situations, 54 ACTA PHARMACOL. TOXICOL. 278 (1984) (abstract available on DIALOG, file 5: Biosis Previews 1981-86) (ethanol alone dose-dependently induced nystagmus).
27. L.R. Erwin, DEFENSE OF DRUNK DRIVING CASES (3d ed. 1985) ("A strong correlation exists between the BAC and the angle of onset of (gaze) nystagmus." Id. at 8.15A(3).
28. Norris, The Correlation of Angle of Onset of Nystagmus With Blood Alcohol Level: Report of a Field Trial, CALIF. ASS'N CRIMINALISTICS NEWSLETTER, June 1985, at 21 (The relationship between the ingestion of alcohol and the inset of various kinds of nystagmus "appears to be well documented." Id. "While nystagmus appears to be useful as a roadside sobriety test, at this time, its use to predict a person's blood alcohol level does not appear to be warranted." Id. at 22).
29. Seelmeyer, Nystagmus, A Valid DUI Test, LAW AND ORDER, July 1985, at 29 (horizontal gaze nystagmus test is used in "at least one law enforcement agency in each of the 50 states" and is "a legitimate method of establishing probable cause." Id.).

30. Burns & Anderson, Field Evaluation Study of the Standardized Field Sobriety Test (SFST) Battery, (Colorado, 1995). Study examined the accuracy of police arrest and release decisions under roadside conditions where trained and experienced officers rely on the SFSTs. Breath and blood tests supported 94% of the decisions to arrest. PBT measurements indicated 64% correct release decisions.
31. Burns & Dioquino, Field Evaluation Study of the Standardized Field Sobriety Test (SFST) Battery, (Florida, 1997). Study demonstrated that officers trained under NHTSA guidelines and experienced in application of the SFST battery in the field were accurate in 95% of arrest decisions and 85% of release decisions.
32. Stuster & Burns, Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent, U.S. Dept. of Transportation Rep. No. DOT-HS-808-839 (1998). Study found NHTSA's Standardized Field Sobriety test battery to be an accurate method of discriminating motorist's BACs above and below 0.08 percent, and above and below 0.04 percent when testing is conducted by officers trained in modified scoring of NHTSA's SFST battery. (See bar graph on next page.)
33. Citek, Ball, & Rutledge, Nystagmus Testing in Intoxicated Individuals, College of Optometry, Pacific University, Forest Grove, Oregon and the Oregon State Police, Wilsonville, Oregon (2003). The HGN test administered in the standing, seated, and supine postures is able to discriminate impairment at criterion BACs of 0.08% and 0.10%. The VGN test can identify high levels of impairment at any test posture. Therefore, these tests can be used by an officer to determine if a driver is impaired, regardless of whether the driver is standing, seated, or supine.
34. Burns, The Robustness of the Horizontal Gaze Nystagmus (HGN) Test, U.S. Department of Transportation Rep. (2004). The data provide no reason to expect HGN examinations of one-eyed individuals to yield misleading information and HGN, as used by law enforcement is a robust procedure, and the data obtained in this experiment do not support recommendations for changes in how officers are trained to view a suspect's eyes and interpret their observations. The study findings provide no basis for concluding that the validity of HGN is compromised by minor procedural variations.

ATTACHMENT B

A Colorado Validation Study
of the
Standardized Field Sobriety Test (SFST) Battery

Final Report Submitted to
Colorado Department of Transportation
November 1995

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HS 178 R9/04

I. Introduction

A battery of standardized field sobriety tests (SFSTs), which was developed under National Highway Traffic Safety (NHTSA) funding during the 1970's, is now used by police officers nationwide. Traffic officers in fifty states, who have been trained in standardized administration of the tests, routinely use them and incorporate their observations of drivers' test performance into their arrest or release decisions. Defense attorneys, however, often challenge the admissibility of court testimony about the test battery.

Roadside decisions are a critical components of alcohol-and-driving enforcement, and, therefore, of traffic safety. Because the SFSTs aid officers in the often-difficult task of identifying alcohol-impaired drivers, it is likely that the tests have contributed in some unknown measure to the significant decline in alcohol-related fatalities over the last decade. Given that they have exerted a positive impact on traffic safety, it is important to resolve questions about their validity and reliability, to maintain their credibility, and to preserve them as a roadside tool.

Because court arguments about SFSTs focus largely on the research conducted at the Southern California Research Institute (SCRI) and because that research is sometimes misrepresented or misunderstood, it is necessary first to clarify its purpose. Two large-scale laboratory experiments were conducted for the purpose of identifying and standardizing a "best" set of tests (Burns and Moskowitz, 1977; Tharp, burns and Moskowitz, 1981). Although it clearly is relevant at this point in time to inquire whether the methods of those experiments were scientifically sound, it should be recognized that the laboratory data are now only indirectly enlightening about current roadside use of the tests. In particular, note that controlled laboratory conditions are less variable and, therefore, may be less challenging than the highly varied conditions which officers routinely encounter in the field.

Also, officer experience with the SFSTs is key to the skill and confidence with which they use them as a basis for their decisions. Thus it is important to understand that the officers who participated in the SCRI studies had not been trained with the SFSTs until just prior to the experiments. They had not had opportunity and time to gain skill or to develop confidence in the tests. In contrast, many of the officers who now use and testify about the tests have been using them regularly for ten or more years, and it is reasonable to assume they have gained skill and to expect that their decisions based on the tests may be more accurate than those of the officers during the initial research.

The question to be addressed in 1995 by agencies, officers and the courts is, "How accurate are the arrest decisions which are made by experienced, skilled officers under roadside conditions when they rely on SFSTs?". A broadly applicable answer cannot be found in laboratory research. It requires field data; i.e., information about real-world arrest decisions by officers trained by NHTSA guidelines to administer the SFSTs.

The Colorado Department of Transportation funded a 1995 study to obtain such data. Through a grant to the Pitkin County Sheriff's Office and with the cooperative effort of seven Colorado law enforcement agencies, records were collected from drivers tested with the SFSTs at roadside. The seven agencies were:

- Aspen Police Department (APD)
- Basalt Police Department (BPD)
- Boulder County Sheriff's Office (BCSO)
- Colorado State Patrol (CSP)
- Lakewood Police Department (LPD)
- Pitkin County Sheriff's Office (PCSO)
- Snowmass Village Police Dept (SVPD)

With information drawn from impaired-driving records, a data base was created and analyzed at the Souther California Research Institute.

Technical Summary

In the State of Colorado, motor vehicle operators are subject to arrest if they are found to be driving with a blood alcohol concentration (BAC) of 0.05% or higher. At BACs of 0.05% or higher but less than 0.10%, they are charged with Driving While Ability Impaired (DWAI). At BACs of 0.10% and higher, the charge is Driving Under the Influence (DUI). These statutes reflect the evidence from both epidemiological and laboratory studies of alcohol impairment of driving skills.

It is the responsibility of law enforcement officers to detect and arrest alcohol-influenced drivers in accordance with these statutory limits. In an effort to meet that objective, police officers, not only in Colorado but in all fifty of the United States, rely on a battery of standardized field sobriety tests (SFSTs). Observations of drivers' performance of the tests, together with driving pattern, appearance and manner, odor of alcohol, and other signs, underlie officers' arrest and release decisions.

To be genuinely useful, roadside tests must be valid and reliable; i.e., they must measure changes in performance associated with alcohol and they must do it consistently. To the extent that they meet the validity and reliability criteria, they can be expected to contribute to traffic safety by increasing the likelihood that alcohol-impaired drivers will be removed from the roadway by arrest. Importantly, they also will further serve the driving public's interest by decreasing the likelihood that a driver who is not alcohol-impaired will be mistakenly detained or arrested. Thus, the validity and reliability of the tests are important issues.

This study was undertaken specifically to extend study of the SFSTs from the laboratory setting to field use. The primary study question was, "How accurate are officers' arrest and release decisions when the SFSTs are used by trained and experienced officers?" Over a five-month period, officers from seven Colorado law enforcement agencies who

volunteered for the study provided the records (N=305) from every administration of the SFSTs.

Using only the standardized 3-test battery (Walk-and-Turn, One-Leg Stand, Horizontal Gaze Nystagmus), officers seldom erred when they decided to arrest a driver.

Breath or blood specimens confirmed that 93% of the arrested drivers were above 0.05% BAC.

Officers were more likely to err on the side of releasing drivers than on the side of incorrectly arresting drivers. Given the difficulty of the task which confronts officers at roadside, in particular with alcohol-tolerant individuals, the finding that approximately one-third of the released drivers should have been arrested is not unexpected. However, it is important to note that officers' decisions to release were correct two-thirds of the time.

Overall, 86% of the officers' decisions to arrest or release drivers who provided blood or breath specimens were correct.

It is concluded that the SFSTs are valid tests; i.e., they serve as indices of the presence of alcohol at impairing levels. The study design did not support an examination of test-retest reliability. It should be noted, however, that the test battery appears to have served equally well across agencies and officers, strongly suggesting that it achieves acceptable reliability as well.

III. Study Design

This study was designed to:

- (1) gather data to assign officers' decisions to the four cells of the decision matrix illustrated in Figure 1, and to
- (2) examine the accuracy of the SFST battery when used in the widely varying weather conditions of Colorado winter, spring, and summer months.

Both the design and the execution of the study focused on the *integrity, completeness, and standardization* of the data.

It is important to note how the study population was defined and how the sample of subjects was drawn. Subjects were a subset of the population of drivers who were detained by police officers during the study period. They were drivers, both those arrested and those released, who were stopped by police officers during the study period *and who were requested to perform the SFSTs*. The officers' decisions about those drivers have been analyzed in terms of correct decisions (Correct Arrests and Correct Releases) and errors (Incorrect Arrests and Incorrect Releases).

In a broader context, the terms Correct Releases and Incorrect Releases could be extended to motorists who were stopped but who were not asked to perform the SFSTs. In many of those cases, the release decisions were correct, but it is likely that some of these were impaired drivers who were released without ever being asked to perform the SFSTs. Those individuals and those decisions are of interest and would be included in an assessment of overall proficiency in DUI detection and arrest. In fact, the entire population of impaired drivers, only some of whom are detected and stopped, is of interest in terms of traffic safety. In a validation study of SFSTs, however, the subjects were only those drivers who were asked to perform the tests.

VI. Summary and Discussion

In 1995, there is a sound base of scientific evidence to support the use of 0.10%, 0.08%, and 0.05% BACs as presumptive and per se alcohol limits for drivers. There also appears to be strong support for those statutes among citizens throughout broad (though not all) segments of society. A clear-cut shift of attitude over the past ten to fifteen years has resulted in anti-drunk driving sentiments by much of the driving population. In many social circles drinking-and-driving now is unacceptable behavior.

Why then, in a largely pro-alcohol enforcement climate, are there negative views of traffic officers' related activities? Citizens often seem to believe that enforcement is hit-or-miss and that officers regularly fail to remove many, if not most, alcohol-impaired drivers from the roadway. Some also seem to believe that the activities at roadside are arbitrary and calculated to harass. Although the multifaceted social and individual variables that underlie this paradox of concurrent anti-enforcement sentiment and anti-drunk driving sentiment are beyond the scope of this report, it is germane to consider one set of factors. At least part of this view of alcohol enforcement is attributable to a general failure to recognize the importance of traffic officers' duties, and to understand not only what their duties encompass but also the difficulty of their task.

Legislators, regulatory agencies, activities groups, and safety-conscious citizens alike sometimes appear to overlook the fact that traffic officers are pivotal in the deterrence of drunk driving. Unless officers are able to detect and arrest impaired drivers, those drivers will never enter the system of sanctions and, therefore, the existence of enabling statutes and anti-drunk driving sentiment will be largely irrelevant to them. Unfortunately, it is also true that the escape of detection and arrest on multiple occasions serves to reinforce the risky behavior. In effect, if no accident and no arrest occur on one or more occasions of drinking and driving, the

citizen may conclude that driving after drinking is acceptable behavior on other occasions.

For a number of reasons, the difficulties associated with traffic officers' alcohol-enforcement responsibilities typically are underestimated. One reason is the misnomer "drunk driving," which suggests that their duty is to apprehend "drunks" or obviously-intoxicated individuals. If that were indeed the sole definition of alcohol enforcement duties, the task would be fairly straightforward. In reality, the risks associated with drinking and driving are not limited to obviously-intoxicated drivers, nor are officers' enforcement responsibilities restricted to those drivers.

Traffic officers are responsible for removing alcohol-impaired drivers from the roadway, and the Colorado statute sets the criterion alcohol levels at 0.10% and 0.05% BAC. In other jurisdictions the BAC limit is 0.08%, with additional lower levels for lesser charges and specific driver groups. Enforcement problems arise in part from the fact that although the evidence clearly establishes that driving skills are impaired at 0.10% BAC and lower, many, possibly even most, individuals who are willing to drive after drinking are not obviously intoxicated at those levels.

Leaving aside the problem of detecting alcohol impairment by the observation of driving behaviors, consider officers' task once they stop vehicles and contact drivers at roadside. Working under widely-varying conditions without special measurement apparatus, they must decide within a few minutes whether a specific driver is impaired by alcohol. Impaired drivers may or may not display atypical speech, appearance, or other personal characteristics, but in either circumstance the officers have no knowledge of any given driver's sober appearance and behavior. The task is further complicated by the tolerant drinker's normal appearance even at very high BACs.

Are there signs and symptoms which are reliably associated with 0.05% and 0.10%? With what level of confidence can the officer arrest or release a driver? With a decision criterion that minimizes incorrect arrests, the risk of releasing impaired drivers rises. On the other hand, a very strict decision criterion will decrease the number of impaired drivers who are released but at the risk of unnecessarily detaining non-impaired drivers. Is one risk preferable to the other? These questions define the context of traffic officers' alcohol enforcement activities and the background of the Colorado Validation Study of the SFSTs.

The records collected and analyzed during this study provide evidence that the SFSTs, as used at roadside by trained and experienced law enforcement officers, are valid indices of the presence of alcohol.

Records of all driver contacts, which resulted in administration of the SFSTs during the study period, were entered into the analysis. Overall, for 234 cases confirmed by breath or blood tests, officers' decisions to arrest and release were 86% correct, and 93% of their arrest decisions were correct.

It was not unexpected to find that officers were almost twice as likely to release incorrectly as to arrest incorrectly. Nonetheless, only 36% of the released drivers were at or above the statutory limit.

These findings obtained in the field with officers experienced with the use of SFSTs can be compared with findings from a laboratory setting with officers recently trained with the SFSTs. It should be kept in mind that the current data are not fully comparable to data from laboratory experiments, since there are differences other than time-since-training and laboratory vs. field. With that caution, the comparisons are instructive.

In an initial study of field sobriety tests with 238 laboratory subjects, officers' decisions overall were 76% correct (Burns and Moskowitz, 1977). Only 54% of their arrest decisions were correct, and only 8% of their release decisions were incorrect. In a second laboratory study, officers' decisions overall were 81% correct, their arrest decisions were 68% correct, and 14% of their release decisions were wrong (Tharp, Burns and Moskowitz, 1981). It is apparent that the arrest criterion was lower in the laboratory. The penalties for mistakes in a laboratory setting are, of course, fairly trivial compared to a real-world setting. The lower criterion, together with lack of experience with the tests, accounts for higher rates of incorrect arrests and lower rates of incorrect releases than found in this study. It is not surprising to find that officers in the field require more certainty about arresting a citizen and adopt a higher criterion with the result that they err in the direction of incorrect releases.

In summary, the data provide clear-cut findings about the use of SFSTs by officers in six Colorado communities. On a broader scale, they provide partial and tentative answers to some important questions. It is hoped that current data from a field setting will facilitate court proceedings with drivers arrested on DUI and DWAI charges. It is hoped, too, that the content of this report will add to the driving public's understanding of roadside enforcement activities, as well as to recognition of police officers' critical role in traffic safety.

ATTACHMENT C

**A FLORIDA VALIDATION
STUDY OF THE
STANDARDIZED FIELD
SOBRIETY TEST (S.F.S.T.)
BATTERY**

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I. INTRODUCTION

During the years 1975-1981, a battery of field sobriety tests was developed under funding by the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (Burns and Moskowitz, 1977; Tharp, Burns, and Moskowitz, 1981). The tests include Walk-and-Turn (WAT), One-Leg Stand (OLS), and Horizontal Gaze Nystagmus (HGN). NHTSA subsequently developed a training curriculum for the three-test battery, and initiated training programs nationwide. Traffic officers in all 50 states now have been trained to administer the Standardized Field Sobriety Tests (SFSTs) to individuals suspected of impaired driving and to score their performance of the tests.

At the time the SFSTs were developed, the statutory blood alcohol concentration (BAC) for driving was 0.10% throughout the United States. The limit now has been lowered in a number of states to 0.08% for the general driving population. "Zero tolerance" is in effect in some jurisdictions for drivers under age 21, and commercial drivers risk losing their licenses at a BAC of 0.04%. It is likely that additional states will enact stricter statutory limits for driving. In light of these changes, a re-examination of the battery was undertaken by McKnight et al. (1995). They reported that the test battery is valid for detection of low BACs and that no other measures or observations offer greater validity for BACs of 0.08% and higher.

The three tests have been incorporated into Drug Influence Evaluations (DIEs) which are conducted by certified Drug Recognition Experts (DREs) whenever an individual is suspected of being drug-impaired. As part of a DRE evaluation, the SFSTs provide important evidence of drug impairment and contribute to the DRE's three-part opinion:

- Is the individual impaired by a drug or drugs?
- If yes, is the impairment drug-related?
- If yes, what category or categories of drug account for the impairment?

A study was conducted in Colorado to examine the validity of the SFSTs when used by experienced officers in the field (Burns and Anderson, 1995). The design of the study insured that roadside testing was limited to the three-test battery, and that officers' decisions were not influenced either by the driver's performance of other behavioral tests or by measurement of BAC with a preliminary breath tester (PBT). The obtained data demonstrated that more than 90% of the officers' decisions to arrest drivers were confirmed by analysis of breath and blood specimens.

A recently-reported NHTSA-funded study was conducted by Anacapa Sciences, Inc. in collaboration with the San Diego Police Department to examine the validity of the SFSTs for both 0.08% and 0.04% (Stuster and Burns, 1997). Officers' estimates of whether a driver's BAC was above or below 0.08% or 0.04% were found to be more than 90% correct.

The Colorado and California studies provide relevant and current field data. The validity of the tests when they are administered in the context of drug evaluations was examined in a retrospective analysis of the records of the Phoenix DRE Unit (Adler and Burns, 1994). It was found that a suspect's performance of the tests provides valid clues of drug impairment.

The study reported here was conducted in collaboration with the Pinellas County Sheriff's Office (PCSO) and expands the examination of the SFSTs to the State of Florida. An overview of PCSO and the demographics for Pinellas County can be found in Appendix I.

II. STUDY BACKGROUND AND RATIONALE

During the early years of SFST use by law enforcement, legal challenges were relatively infrequent. For more than a decade now, however, defense counsel in many jurisdictions has sought to prevent the admission of testimony about a defendant's performance of the three tests. The objections, which continue to be persistent and vigorous in 1997, typically focus on test validity and reliability as demonstrated in the original laboratory research. It is entirely appropriate to inquire whether that early research to identify a best set of sobriety tests was conducted with scientific rigor. Beyond that inquiry, however, the data, which were obtained in a laboratory setting and now are more than twenty years old, are of little interest. Certainly, they are only marginally relevant to current roadside use of the tests. The questions which begs to be addressed in 1997 is whether the tests are valid and reliable indices of the presence of alcohol when they are used at roadside under present day traffic and law enforcement conditions.

Experience and confidence have a direct bearing on an officer's skill with roadside tests. In this regard, note that the officers who participated in the early SCRI studies had been only recently and briefly (4 hrs) trained to administer the test battery. There had been no time for them to use the tests in the field where they might have developed confidence in decisions based on them. Nonetheless, their decisions were 76% correct in the first study and 81% correct in the second study.

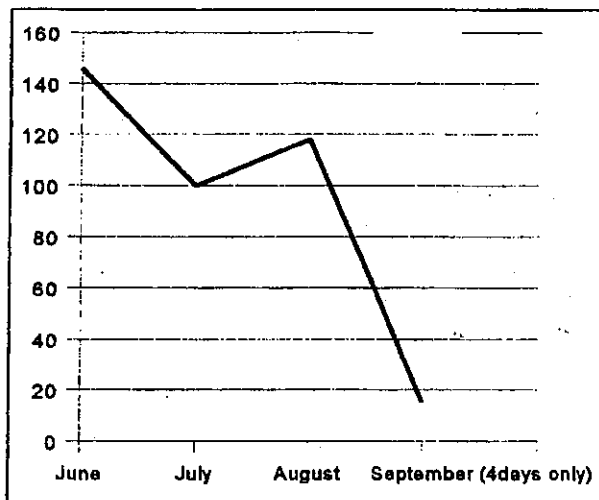
At this point in time, many traffic officers have had ten or more years' experience with the test battery and many report that they confidently rely on them. Since it seems unlikely in the extreme that they would continue to rely on tests which repeatedly lead to decision errors, it is a reasonable assumption that more often than not their roadside decisions *to arrest* are supported by measured BACs. Whether their decisions *to release* are correct is largely unknown since the released driver's BAC generally is not measured.

Traffic officers are charged with the detection and arrest of impaired drivers. Although their roadside duties are central to roadway safety, recognition of alcohol-impaired drivers can be difficult and is, therefore, subject to error. If officers are to effectively meet this particular enforcement responsibility, they need to augment their general observations of suspects with sensitive, accurate sobriety tests. The tests not only aid in the removal of dangerously impaired drivers from the roadway, they also protect the driver who is not alcohol or drug impaired from being improperly detained. Thus, rigorous examinations of the SFSTs are important to traffic safety.

V. RESULTS

The first record in the data base is for an arrest which occurred on June 1, 1997, and the last record is dated September 4, 1997. During the study period, 379 records were submitted for the study. Figure 3 graphs the total number of records by month. As expected, the initial activities generated enthusiasm among participants, and the largest number of citizen contacts occurred during the first project month. Although available time of participating officers was affected during July and August by scheduled training days and vacations, and although it typically is difficult to sustain the initial high interest level, the actual decline in arrests over the extended project period was not large. The final month is not comparable, since data collection extended only a few days into September.

FIGURE 3
SFST Records by Month



A. Total Sample and Measured BACs

Table 3 summarizes the disposition of 379 records obtained during this study. As can be seen in the table and in Figure 4, the BACs of 256 drivers were measured. Thus, BACs are available for 81.8% of the 313 cases entered into an analysis of officers' decisions. Evidential testing at the booking facility accounts for 210 of the BACs. Forty-six were obtained with a Preliminary Breath Testing (PBT) device. A log of all cases appears in Appendix IV.

VI. SUMMARY AND DISCUSSION

Legislators have lowered the limits for alcohol levels in drivers from 0.15%, which was the very early standard, to 0.10% or 0.08%. The lower statutory limits are soundly based in data from scientific experiments and from epidemiology and are an important step toward safer roadways. Whether their *full* potential for reducing alcohol-involved crashes can be reached, however, depends on effective enforcement. Failure to enforce a statute, whatever the reason for the failure, weakens that statute and may actually render it counterproductive to some degree.

Traffic officers are the first link in the series of events that brings a DUI driver into the criminal justice system. Unless officers are able to detect and arrest impaired drivers, those drivers will not experience the sanctions which are intended to deter impaired driving. Although there are many aspects to effective DUI enforcement, certainly it is crucial for officers to be proficient in assessing the alcohol impairment of drivers they detain at roadside.

As an aid to their roadside decisions, officers rely upon a battery of tests, the SFSTs, to augment their general observations of a driver. At this point in time, no other tests have been shown to better discriminate between impaired and unimpaired drivers. Nonetheless, the battery, and in particular Horizontal Gaze Nystagmus, frequently is attached vigorously during court proceedings. Thus, the examination of officers' decisions, based on the SFSTs, is of considerable interest.

If it can be shown that officers' reliance on the tests is misplaced, causing them frequently to err, then the officers, the courts, and the driving public need to be aware that the tests are not valid and that DUI laws are not being properly enforced. If, on the other hand, it can be shown that officers typically make correct decisions, based on the SFSTs, perhaps the legal controversy that has centered on them for more than a decade can be diffused and court time can be devoted to more substantive issues.

The data obtained during this study demonstrate that 95% of the officers' decisions to arrest drivers were correct decisions. Furthermore, 82% of their decisions to release drivers were correct. It is concluded that the SFSTs not only aid police officers in meeting their responsibility to remove alcohol-impaired drivers from the roadway, they also protect the rights of the unimpaired driver. These data validate the SFSTs as used in the State of Florida by Pinellas County Sheriff's deputies who have been trained under NHTSA guidelines. SFST validity now has been demonstrated in Florida, California (1997) and Colorado (1995). There appears to be little basis for continuing legal challenge.

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DWI INVESTIGATION FIELD NOTES

I. NAME _____ SEX _____ RACE _____
 ADDRESS _____ CITY/STATE _____ OP.LIC.NO. _____
 D.O.B. ____/____/____ SOC. SEC. # _____
 VEHICLE MAKE _____ YEAR _____ LIC. _____ STATE _____
 DISPOSITION _____ NO. PASSENGERS _____
 INCIDENT LOCATION _____
 DATE ____/____/____ TIME _____ CRASH YES NO

II. VEHICLE IN MOTION

INITIAL OBSERVATIONS _____

OBSERVATION OF STOP _____

III. PERSONAL CONTACT

OBSERVATION OF DRIVER _____

STATEMENTS _____

PRE-EXIT SOBRIETY TESTS _____

OBSERVATION OF THE EXIT _____

ODORS _____

GENERAL OBSERVATIONS

SPEECH _____

ATTITUDE _____

CLOTHING _____

PHYSICAL DEFECTS / DRUGS OR MEDICATIONS USED _____

IV. PRE-ARREST SCREENING

HORIZONTAL GAZE NYSTAGMUS

Equal Pupils Yes No LACK OF SMOOTH PURSUIT
 Equal Tracking Yes No DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION
 Vertical Nystagmus Yes No ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES
 Other (i.e., Resting Nystagmus) _____

LEFT	RIGHT

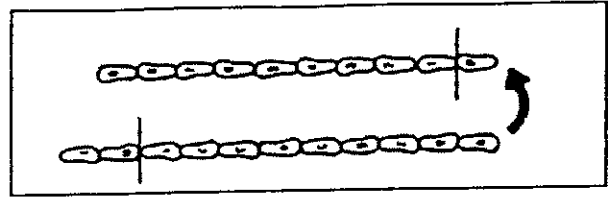
WALK AND TURN

INSTRUCTIONS STAGE

CANNOT KEEP BALANCE

STARTS TOO SOON

WALKING STAGE



FIRST NINE STEPS

SECOND NINE STEPS

STOPS WALKING

MISSES HEEL -TO- TOE

STEPS OFF LINE

RAISES ARMS

ACTUAL STEPS TAKEN

IMPROPER TURN (Describe) _____

CANNOT DO TEST (EXPLAIN) _____

OTHER: _____

ONE LEG STAND

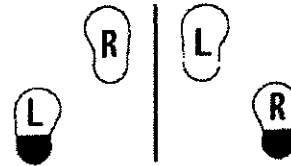
L	R

Sways while balancing.

Uses arms to balance.

Hopping.

Puts foot down.



Type of Footwear

CANNOT DO TEST (EXPLAIN) _____

OTHER: _____

OTHER FIELD SOBRIETY TESTS

NAME OF TEST _____

DESCRIBE PERFORMANCE _____

NAME OF TEST _____

DESCRIBE PERFORMANCE _____

NAME OF TEST _____

DESCRIBE PERFORMANCE _____

Thirty Minutes

SESSION I
INTRODUCTION AND OVERVIEW

SESSION I

INTRODUCTION AND OVERVIEW

Upon successfully completing this session, the students will be able to:

- o State the goals and objectives of the course.
- o Describe the course schedule and activities.
- o Demonstrate their pre-training knowledge of course topics.

CONTENT SEGMENTS







- A. Welcoming Remarks and Objectives
- B. Administrative Details
- C. Pre-Test

LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Written Examination



Display Slide I-O (Session Objectives)

Aides	Lesson Plan	Instructor Notes
  10 Minutes	I. INTRODUCTION AND OVERVIEW A. Welcoming Remarks and Objectives	Total Session Time: Approximately 30 minutes Segment A: 10 minutes
	<ol style="list-style-type: none"> 1. Welcome to the DWI Detection and Standardized Field Sobriety Testing Training Program. 2. Instructor Introductions <ol style="list-style-type: none"> a. Principal instructor (name, relevant background, etc.) b. Instructor aides and other relevant individuals (names, assignments, etc.) 3. Program Goals/Objectives 	<p>Point out program title on wall chart or chalkboard.</p> <p>Write names on chalkboard or flipchart.</p>
 Display Overheads I-1 and I-1A	<ol style="list-style-type: none"> a. Ultimate Goal b. Overview of the DWI Problem 	<p>Display a slide illustrating current crash data relating to the DWI problem.</p>
 Display Overheads I-2A and I-2B	<ol style="list-style-type: none"> c. Job Performance Objectives 	<p>I-2B (Local Perspective - Fill in appropriate information)</p>
 Display Overhead I-3		<p>Point out that the success or failure of the program will be judged on the basis of students' improvements in these key abilities.</p>
HS 178 R9/04	I-1	

Aides**Lesson Plan****Instructor Notes****7 Minutes****B. Administrative Details**

1. Seminar schedule (breaks, etc.)
2. Facilities (rest rooms, lunchroom, etc.)
3. Logistics (travel vouchers, etc.)
4. Reading Assignments in Student Manual.
5. Refer to Glossary Located At End of Session I

Develop list of reading assignments for each day and prepare a handout. Reading assignment at end of day one should cover materials presented on day one and day two. Subsequent reading assignments should cover material to be presented on following day. Point out that sessions II - VIII have review questions at the end of each chapter.

**13 Minutes****C. Pretest**

1. Purpose of Pre-test - provide a basis for evaluating students' knowledge gain during the seminar.
2. Distribute pre-tests.
3. Collect completed pre-tests.

Allow students approximately 10 minutes to complete the pre-test.

NOTE: Redistribute pre-test to students after they are graded by instructor(s).

GLOSSARY OF TERMS

ALVEOLAR BREATH - Breath from the deepest part of the lung.

BLOOD ALCOHOL CONCENTRATION (BAC) - The percentage of alcohol in a person's blood.

BREATH ALCOHOL CONCENTRATION (BrAC) - The percentage of alcohol in a person's breath, taken from deep in the lungs.

CLUE - Something that leads to the solution of a problem.

CUE - A reminder or prompting as a signal to do something. A suggestion or a hint.

DIVIDED ATTENTION TEST - A test which requires the subject to concentrate on both mental and physical tasks at the same time.

DWI/DUI - The acronym "DWI" means driving while impaired and is synonymous with the acronym "DUI", driving under the influence or other acronyms used to denote impaired driving. These terms refer to any and all offenses involving the operation of vehicles by persons under the influence of alcohol and/or other drugs.

DWI DETECTION PROCESS - The entire process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DWI violation. The DWI detection process has three phases:

- Phase One - Vehicle In Motion
- Phase Two - Personal Contact
- Phase Three - Pre-arrest Screening

EVIDENCE - Any means by which some alleged fact that has been submitted to investigation may either be established or disproved. Evidence of a DWI violation may be of various types:

- a. Physical (or real) evidence: something tangible, visible, or audible.
- b. Well established facts (judicial notice).
- c. Demonstrative evidence: demonstrations performed in the courtroom.
- d. Written matter or documentation.
- e. Testimony.

FIELD SOBRIETY TEST - Any one of several roadside tests that can be used to determine whether a suspect is impaired.

HORIZONTAL GAZE NYSTAGMUS (HGN) - Involuntary jerking of the eyes, occurring as the eyes gaze to the side.

ILLEGAL PER SE - Unlawful in and of itself. Used to describe a law which makes it illegal to drive while having a statutorily prohibited Blood Alcohol Concentration.

NYSTAGMUS - An involuntary jerking of the eyes.

ONE-LEG STAND (OLS) - A divided attention field sobriety test.

PERSONAL CONTACT - The second phase in the DWI detection process. In this phase the officer observes and interviews the driver face to face; determines whether to ask the driver to step from the vehicle; and observes the driver's exit and walk from the vehicle.

PRE-ARREST SCREENING - The third phase in the DWI detection process. In this phase the officer administers field sobriety tests to determine whether there is probable cause to arrest the driver for DWI, and administers or arranges for a preliminary breath test.

PRELIMINARY BREATH TEST (PBT) - A pre-arrest breath test administered during investigation of a possible DWI violator to obtain an indication of the person's blood alcohol concentration.

PSYCHOPHYSICAL - "Mind/Body." Used to describe field sobriety tests that measure a person's ability to perform both mental and physical tasks.

STANDARDIZED FIELD SOBRIETY TEST BATTERY - A battery of tests, Horizontal Gaze Nystagmus, Walk-and-Turn, and One-Leg Stand, administered and evaluated in a standardized manner to obtain validated indicators of impairment based on NHTSA research.

TIDAL BREATH - Breath from the upper part of the lungs and mouth.

VEHICLE IN MOTION - The first phase in the DWI detection process. In this phase the officer observes the vehicle in operation, determines whether to stop the vehicle, and observes the stopping sequence.

VERTICAL GAZE NYSTAGMUS - An involuntary jerking of the eyes occurring as the eyes are held at maximum elevation.

WALK-AND-TURN (WAT) - A divided attention field sobriety test.

50 Minutes

SESSION II
DETECTION AND GENERAL DETERRENCE

SESSION II

DETECTION AND GENERAL DETERRENCE

Upon successfully completing this session, the student will be able to:

- o Describe the frequency of DWI violations and crashes.
- o Define General Deterrence.
- o Describe the Relationship between Detection and General Deterrence.
- o Describe a brief history of alcohol;
- o Identify common alcohol types;
- o Describe the physiologic processes of absorption, distribution and elimination of alcohol in the human body;

CONTENT SEGMENTS

- A. The DWI Problem
- B. The Concept of General Deterrence
- C. Relating Detection to Deterrence Potential
- D. Evidence of Effective Detection and Effective Deterrence
- E. Physiology of Alcohol

LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Reading Assignments



Display Slide II-O (Session Objectives)

Aides

Lesson Plan

Instructor Notes



10 Minutes



**Display
Overhead II-1**



**Display
Overhead II-2**

**II DETECTION & GENERAL
DETERRENCE**

**A. The DWI Problem (Local,
State and National)**

1. Each year, an average of ____ people die in this state's traffic crashes.

2. Here and throughout the nation, alcohol continues to be the major contributor to traffic fatalities.
 - a. Prior to 1994, nearly half of the drivers who died in crashes had been drinking.

 - b. In 2002, alcohol-related fatalities rose to 17,419, representing 41 percent of all traffic fatalities.

Total Session Time:
Approximately 50 minutes.

Instructor please note: compute figures for the students' state and/or community from traffic records data. Slide II-1(fill in appropriate information).

NHTSA 2002 FARS data.



Ask students to suggest reasons why alcohol-related crashes are more likely to result in death.

Some reasons:

- o drinking-drivers are more likely to be taking excessive risks (speeding, turning abruptly, etc.)

- o drinking-drivers may not react in enough time to slow down prior to crashing.

- o drinking-drivers are less likely to use their safety belts.



Display
Overhead II-3



Display
Overhead II-4

3. DWI violations and crashes are not simply the work of relatively few "problem drinkers" or "problem drug users": many people commit DWI, at least occasionally.

a. A survey of 9,028 drivers across the country revealed that 14 percent reported they had recently (within last 3 months) operated a motor vehicle "while close to or under the influence of alcohol." Only 2 percent of these drivers said they were stopped while driving after drinking.

b. Random survey of drivers stopped at all hours during one week; 12% had been drinking; 2% had Blood Alcohol Concentration of 0.10 or higher.

c. Random surveys of drivers stopped during late evening - early morning hours on weekends: approximately 10% had Blood Alcohol Concentrations of 0.10 or higher.

d. Special study of drivers leaving bars between 9 p.m. and 2 a.m., Friday and Saturday nights: one out of seven had Blood Alcohol Concentration of 0.10 or higher.

Gallup Survey, September, 1991

Sources: numerous roadside surveys conducted by Alcohol Safety Action Projects.

Source: NHTSA Study, Connecticut, 1976. This study prompted the need for selecting, developing and validating future roadside sobriety tests to be used by police officers.



Display
Overhead II-5



Display
Overhead II-6



5 Minutes



Display
Overhead II-7



Display
Overhead II-8

- e. It is conservatively estimated that the typical DWI violator commits that offense about 80 times per year.
- f. Miscellaneous Alcohol Facts

B. Concept of General Deterrence

1. General deterrence of DWI is based on the driving public's fear of being arrested.
 - a. If enough violators come to believe that there is a good chance that they will get caught, some of them (at least) will stop committing DWI at least some of the time.
 - b. Unless there is a real risk of being arrested, there will not be much fear of arrest.
2. Law enforcement must arrest enough violators to convince the public that they will get caught, if they continue to drive while impaired.



Pose this question to class: "How do we convince the public that there is a good chance of being arrested for DWI?" Gently guide the discussion to bring out the fact that an appreciable number of violators must be arrested if others are to believe there is a real risk that they will be arrested.



10 Minutes

C. Relating Detection to Deterrence Potential

1. How much deterrence is enough?
 - a. Question Number 1: How many DWI violators do we have to arrest in order to convince an appreciable proportion of them that there is a real risk that they will be arrested?
 - b. Question Number 2: Are we presently arresting enough violators in this state to convince them that there is a real risk of being caught?
2. Estimates from around the country: For every DWI violator arrested, there are between 500 and 2,000 undetected DWI violations.
 - a. Question Number 3: If the chances of being arrested are one in 2,000, do you believe that the average DWI violator will fear arrest?
 - b. Question Number 4: Why is the DWI arrest-to-violation ratio so low?



Pose question #1, and solicit responses from representative students.



Pose question #2, and solicit responses from representative student.



Pose question #3 to class. Draw an analogy - compare with attempting to house-break a puppy by punishing the puppy only once every 2,000 times it "messes" on the carpet.



Pose question #4 to the class. Gently guide the discussion to bring out two possibilities:

- o DWI violators vastly outnumber police officers.

Aides

Lesson Plan

Instructor Notes



Display
Overhead II-9



Display
Overhead
II-10



5 Minutes



Display
Overhead
II-11

c. Police officers sometimes fail to recognize and arrest a DWI violator.

d. Ft. Lauderdale (Florida) BAC study (1975): only 22% of traffic violators with BACs between 0.10 and 0.20 were arrested for DWI.

e. Implication: For every DWI violator actually arrested three others are contacted by police officers, face-to-face, but are released without arrest.

f. Significant improvement in arrest rate could be achieved if officers were more skilled at DWI detection.

D. Evidence of Effective Detection and Effective Deterrence

1. Several enforcement programs have succeeded in achieving significant DWI deterrence.

a. Weekend Enforcement Program, Stockton, California (late 1970's):

- o arrests up 500%.
- o crashes down 34%.

o Some officers not well trained in DWI detection.

Instructor please note: In the Ft. Lauderdale study, breath tests were administered to traffic violators by research staff members, after police officers had completed their investigations of the violators. Officers failed to detect 78% of the DWI violators they investigated.

POINT OUT HERE: THIS STUDY WAS THE REASON FOR NHTSA DEVELOPING THIS COURSE.

Summarize Stockton program effectiveness.

Point out that this level of deterrence was achieved with an arrest/violation ratio of about 1-in-400.

- o DWI drivers down from 9% on road to 6% on road.

2. This same, or better, degree of effectiveness can happen here.

Point out that the keys to success are:

- (a) Better training in detection skills.
- (b) Willingness to arrest every DWI violator who is detected.

Solicit students' questions concerning general deterrence.



20 Minutes



Display
Overhead
II-12

E. Physiology of Alcohol

1. A Brief Overview of Alcohol

- a. The word "Alcohol" refers to a number of distinct but similar chemicals.

- (1) Each of the chemicals that is called an "alcohol" is composed of the three elements, hydrogen, carbon and oxygen.
- (2) Each type of "alcohol" is a drug within the scope of our definition.
- (3) But only one can be tolerated by the human body in substantial quantities.

Clarification: All "alcohols" are chemicals that impair driving ability.

Clarification: Most "alcohols" are highly toxic, and will cause blindness or death if consumed in significant quantities.

Only one is intended for human consumption.



Display
Overhead
II-13

b. Three of the more commonly-known "alcohols" are Methyl, Ethyl and Isopropyl.

(1) Methyl Alcohol, also known as **Methanol**, or "wood alcohol".

(2) Ethyl Alcohol, also known as **Ethanol**, or "beverage alcohol".

(3) Isopropyl Alcohol, also known as **isopro-panol**, or "rubbing alcohol".

c. Ethanol is the type of alcohol on which we will focus, because it is the only type intended for human consumption.

(1) Ethanol is the active ingredient in beer, wine, whiskey and other alcoholic beverages intended for drinking.

(2) Like all "alcohols", ethanol is composed of hydrogen, carbon and oxygen.

(3) Chemists use a number of different symbols to represent ethanol.



ASK STUDENTS:
What are the names of some of the chemicals that are "alcohols"?

EMPHASIZE: Ethanol is the only kind of alcohol that humans can tolerate in significant quantities.



Display
Overhead
II-14



Display
Overhead
II-15

- d. We will use the symbol "ETOH".
- e. Ethanol has been around for a long time. People drank it long before they learned to write.
- f. Ethanol is a naturally-occurring drug. That is, it is produced in nature through a process called **fermentation**.
- (1) In fermentation, spores of yeast, carried by the wind, come in contact with fruit or grain that has fallen to the ground.
- (2) Sugars in the fruit or grain chemically react with the yeast, and produce ethanol.
- g. Today, most fermentation takes place **on purpose**, under controlled conditions.
- h. Through the process of fermentation, we can produce a beverage that has, at most, about 14% ethanol.

Instructor, for your information: The "ET" represents "ethyl", and the "OH" represents an oxygen atom and hydrogen atom, bonded together in what the chemists refer to as the "hydroxy radical". All alcohols have an hydroxy radical in their molecules.

Selectively reveal the first part of the overhead only.

POINT OUT that humans almost certainly first encountered ethanol that had been produced accidentally in this fashion.



ASK STUDENTS:
"Why can't fermentation produce a higher ethanol concentration than 14%?"

- (1) When the ethanol concentration reaches 14% yeast dies so fermentation stops.
- (2) If we want to have a higher concentration ethanol beverage, we have to use another step in the production.

i. **Distillation** is the process used to produce a higher concentration of ethanol.

- (1) In distillation, a fermented beverage is heated to the point where the ethanol begins to boil.
- (2) The ethanol vapor is collected and allowed to cool until it turns back into a liquid.
- (3) By repeating the process of heating the liquid and collecting and cooling the vapors, higher and higher concentrations of ethanol can be produced.
- (4) Ethanol beverages that are produced by distillation are called **distilled spirits**.

j. Over the centuries in which people have produced ethanol, some standard-sized servings of different beverages have evolved.

Reveal the lower part of Overhead II-15.

POINT OUT that ethanol starts to boil at a lower temperature than does water.



ASK STUDENTS to name some "distilled spirits" (e.g., whiskey; vodka; gin; rum; etc.)



Display
Overhead
II-16

(1) Beer is usually served in 12-ounce cans or bottles. Since beer averages an alcohol concentration of four percent, a can or bottle contains a bit less than one-half ounce of pure ethanol.

(2) Wine typically is served in a four-ounce glass. At an alcohol concentration of 12 percent, the glass of wine also has just a bit less than one-half ounce of pure ethanol.

(3) Whiskey and other distilled spirits are dispensed in a "shot" glass, which usually contains one and one-quarter ounces of liquid.

(4) Since whiskey usually has an alcohol concentration of 40%, a "shot" of whiskey has exactly one-half ounce of pure ethanol.

k. Standard-sized servings of beer, wine and whiskey all pack the same "punch".

2. Physiologic Processes

a. Alcohol is the most abused drug in the United States.

b. Alcohol is a central nervous system depressant:

Reveal only the "beer" part of the overhead.

Reveal the "wine" part of Overhead II-16.

Reveal the "whiskey" part of Overhead II-16.

POINT OUT that the "proof" of a distilled spirit is equal to twice the ethanol concentration.

SOLICIT students comments and questions on this overview of alcohol.



Display
Overhead
II-17

Aides

Lesson Plan

Instructor Notes

(1) It doesn't impair until it gets into the brain.

(2) It can't get into the brain until it first gets into the blood.

(3) It can't get into the blood until it first gets into the body.

c. There are a number of ways in which alcohol can get into the body.

(1) It can be **injected** into a vein, via hypodermic needle.

(2) It can be **inhaled**, i.e., alcohol fumes can be brought into the lungs, and some molecules will pass into the blood.

(3) But the vast majority of times that alcohol gets into the body, it gets there via **drinking**.

d. Once the alcohol is in the stomach, it will take two routes to get into the blood.

(1) One interesting thing about alcohol is that it is able to pass directly through the stomach walls.

POINT OUT that a person would have to inhale concentrated alcohol fumes for a prolonged period of time in order to develop a significant blood alcohol concentration.

POINT to that "route of passage" on Overhead II-18.



Display
Overhead
II-18

- (2) Under normal conditions, about 20% of the alcohol a person drinks gets into the blood by diffusing through the walls of the stomach.
 - (3) But most of the alcohol usually passes through the base of the stomach into the **small intestine**, from which it passes quickly into the blood.
- e. Another interesting thing about alcohol is that it does not have to be digested before it can move from the stomach to the small intestine.
- (1) When a person eats food, the food must remain for a time in the stomach.
 - (2) Acids and enzymes in the stomach must begin to break down the food to prepare it to pass to the lower portion of the gastrointestinal tract.
 - (3) While the initial digestive process is underway, a muscle at the base of the stomach will constrict, and shut off the passage to the small intestine.

POINT to that "route of passage" on Overhead II-18.

(4) That muscle is called the **pylorus**, or pyloric valve.

f. Since alcohol doesn't have to be digested, the pylorus does not constrict when alcohol enters the stomach.

(1) If we drink on an empty stomach, the pylorus stays wide open.

(2) The alcohol will pass immediately through the base of the stomach, into the small intestine, and quickly move into the bloodstream.

g. But what will happen if there is food in the stomach when the person drinks alcohol?

(1) Food will cause the pylorus to constrict.

(2) While the pylorus is closed, nothing will move from the stomach to the small intestine.

(3) Any alcohol that is in the stomach will be "trapped" there, along with the food.

POINT to the pylorus on Overhead II-18.



POSE this question to the class.



Display
Overhead
II-19

(4) The alcohol will not get into the blood as quickly, and the blood alcohol concentration will not get as high, as if the drinking had been done on an empty stomach.

(5) While the alcohol is trapped in the stomach, the acids and enzymes will start to react with it and break it down.

(6) By the time the pylorus opens, some of the alcohol will have been chemically changed, so there will be less available to get into the blood.

h. Once alcohol gets into the blood, the blood will carry it to the various tissues and organs of the body.

(1) Alcohol is attracted to water. The blood will deposit the alcohol in all the parts of the body where water is found.

(2) Parts of the body that have a lot of water will receive a lot of alcohol.

(3) Parts of the body that have only a little water will receive little alcohol.

SOLICIT students' comments and questions about the absorption of alcohol into the blood.

Reveal top part of overhead only.

Now reveal lower part of Overhead II-19.



Display
Overhead
II-20

- i. Which parts of the body have a lot of water?
- (1) The brain
 - (2) The liver
 - (3) Muscle Tissue
 - (4) The Kidney
- j. Which parts contain very little water?
- (1) Bones
 - (2) Fatty tissue
- k. The **muscle tissue** will receive a relatively high proportion of the alcohol that a person drinks.
- l. The **fatty tissue** will receive very little of the alcohol.
- m. Here is an interesting and significant difference between men and women: pound-for-pound, the average male has much more water in his body than the average female.
- (1) The female body has more fatty tissue than does the male body:
 - (2) Pound-for-pound, the average female has more fat and less muscle than does the average male.



POSE this question, and solicit responses from students. Then, display the first part of Overhead II-20 (Which Parts ..)



POSE this question and solicit responses from students. Then, display the second part of Overhead II-20.

POINT to "muscle tissue" on Overhead II-20.

POINT to "fatty tissue" on Overhead II-20.

NOW REVEAL the last part of Overhead II-20 (The average..)



ASK students to suggest why this significant difference exists.

Clarification: the female's extra fatty tissue serves as a "shock absorber" and thermal insulator to protect a baby in the womb.



Display
Overhead
II-21

(3) Since fatty tissue has very little water, the average female, pound-for-pound, has less water than the average male.

(4) This means that the average woman has fewer places in her body in which to deposit the alcohol she drinks.

n. The woman's blood alcohol concentration will be higher than the man's, because she has less water in which to distribute the alcohol.

o. As soon as alcohol gets into the body, the body begins working to get rid of it.

(1) Some alcohol is simply **expelled directly** from the body, i.e., on the breath, in the sweat, in urine, etc.

(2) Relatively little of the alcohol we drink is directly expelled from the body.

(3) The body eliminates most of the alcohol by chemically breaking it down.



ASK STUDENTS:
Suppose a woman and a man who weigh exactly the same drink exactly the same amount of alcohol under exactly the same conditions. Who will reach the higher BAC?

Solicit students' comments and questions about the distribution of alcohol in the body.

Reveal only the top part of the overhead.

Reveal the middle part of the overhead.

Clarification: Only about 2-10% of the alcohol we consume is directly excreted in the breath, urine, etc.



ASK STUDENTS:
What organ in the body is primarily responsible for chemically breaking the alcohol down?



Display
Overhead
II-22

(4) The liver is primarily responsible for breaking down, or **metabolizing**, the alcohol.

p. Metabolism of alcohol actually consists of a slow, controlled **burning** of the alcohol.

(1) In the burning process, the alcohol combines with oxygen.

(2) The liver has an enzyme called **alcohol dehydrogenase**, which helps to speed up the reaction of oxygen with the alcohol.

(3) The reaction of alcohol with oxygen ultimately produces carbon dioxide and water, which can be directly expelled from the body.

Reveal the bottom part of the overhead.

Instructor, for your information: Some metabolism of alcohol also takes place in other parts of the body, including the brain. But the liver does the vast majority of the job.

Reveal the first "bullet" of the overhead.

Reveal the second "bullet" of the overhead.

Clarification: The enzyme does not react with the alcohol itself, but simply makes it easier for the oxygen to react with the alcohol. The technical term for something that helps a chemical reaction while not itself taking part in the reaction is a **catalyst**. Alcohol dehydrogenase is a catalyst for the metabolism of alcohol.

Reveal the third "bullet" of the overhead.

Aides

Lesson Plan

Instructor Notes

(4) The speed with which the liver burns alcohol varies from person to person, and will change from time to time for any particular person.

(5) BUT ON THE AVERAGE: Due to metabolism, a person's BAC will drop by about 0.015 per hour.

q. For the average male, a BAC of 0.015 is equal to the alcohol content of about two-thirds of a "standard drink".

(1) i.e., about two-thirds of a can of beer.

(2) or about two-thirds of a glass of wine, or two-thirds of a shot of whiskey.

r. For the average woman, a BAC of 0.015 is equal to the alcohol content of only one-half of a "standard drink".

(1) So the average male can "burn up" about two-thirds of a drink in an hour.

(2) But the average female can only burn up about one-half of a drink in an hour.

Reveal the final "bullet" of the overhead.



POSE this problem to the class: Suppose a person reaches a peak BAC of 0.15. How long will it take for his or her body to eliminate all of the alcohol?
Answer: ten hours [0.15-(X hours)(0.015/hour) X = 10]

Note: The term BAC is used in the manual. However, it should be understood to refer to either Blood Alcohol Concentration (BAC) or Breath Alcohol Concentration (BrAC) depending on the legal requirements of the jurisdiction.



Display
Overhead
II-23

(3) If an average man drinks a can of beer, it will take him about an hour and one-half to burn up that alcohol; if a woman does the same thing, it will take her about two hours.

s. How can we speed up the metabolism of alcohol?

(1) **We can't speed it up.**

(2) Drinking coffee won't help.

(3) A cold shower won't help.

(4) Exercise won't help.

t. The liver takes its time burning up the alcohol.

3. Dose-Response Relationships

a. What does "**Blood Alcohol Concentration**" mean?

(1) Blood alcohol concentration means the number of **grams** of alcohol that are found in every **100 milliliters** of a person's blood.

(2) A gram is a measure of weight; it takes almost 500 grams to make a pound.



POSE this question to the class.

Solicit students' comments and questions about the elimination of alcohol from the body.

Reveal only the question at the top of the overhead.

Solicit students' responses.

Reveal the middle part of Overhead II-23.

Instructor, for your information: It actually takes 454 grams to make a pound.

(3) A milliliter is a measure of volume. It takes about 500 milliliters to make a pint.

(4) The so-called "illegal limit" of BAC in all states is 0.08.

(5) If a person has a BAC of 0.08, it means there are 0.08 grams of pure ethanol in every 100 milliliters ("percent") of hid/her blood.

b. How much alcohol does a person have to drink to reach a BAC of 0.08?

(1) Take an average male weighing 175 pounds and in reasonably good physical shape.

(2) Assume he does his drinking on an empty stomach.

(3) It is estimated that a person would have to consume four cans of beer, four glasses of wine or four shots of 80-proof whiskey in a fairly short period of time to reach a BAC of 0.08.

Example: A 12-ounce can of beer has about 350 milliliters.

Reveal the bottom part of Overhead II-23.

The term "percent" is sometimes informally used because the concentration is determined in units of one hundred. However, instead of being a true "percent", the actual units are measured in mass (grams) of ethanol per volume (milliliters) of blood.



POSE this question to the class.

NOTE: There are numerous physiological variables that can affect BAC such as gender, weight, stomach contents, medical/health, metabolic rate, etc.

Aides

Lesson Plan

Instructor Notes

(4) Review questions are located at end of Session H (Optional Test).

(5) In terms of **pure ethanol**, that would amount to just about two and one-half fluid ounces, or about two shot glasses.

(6) If one of the shot glasses was filled with pure ethanol and the other half-filled, there would be enough of the drug to bring an average man's BAC to 0.08.

(7) So answer this: Does it take a lot of ethanol to impair a person, or only a little?

c. In one respect, it certainly doesn't take much ethanol to impair: Just two full shot glasses will more than do the trick for a full-sized man.

d. **BUT COMPARED TO OTHER DRUGS**, it takes an enormous quantity of ethanol to cause impairment.

DISPLAY two standard-sized shot glasses, filled with water.

HOLD up the two shot glasses while posing the next question.

Solicit students' responses to the question.

HOLD up the glasses again.

Aides	Lesson Plan	Instructor Notes
	<p>Physiology of Alcohol Student Review</p> <ul style="list-style-type: none"> - Name three different chemicals that are alcohols. - Which of these is beverage alcohol, intended for human consumption? - What is the chemical symbol for beverage alcohol? - What is the name of the chemical process by which beverage alcohol is produced naturally? - What is the name of the process used to produce high-concentration beverage alcohol? - Multiple Choice: "Blood alcohol concentration is the number of _____ of alcohol in every 100 milliliters of blood." <ul style="list-style-type: none"> A. grams B. milligrams C. nanograms - True or False: Pound-for-pound, the average woman contains more water than does the average man. - What do we mean by the "proof" of an alcoholic beverage? 	<p>Methyl, Ethyl and Isopropyl. (or, Methanol, Ethanol and Isopropanol.) (or, Wood Alcohol, Beverage Alcohol, and Rubbing Alcohol.)</p> <p>Ethanol is the beverage alcohol, intended for human consumption.</p> <p>The four-letter chemical symbol is ETOH.</p> <p>Fermentation</p> <p>Distillation</p> <p>Correct answer is <u>A</u>, "grams".</p> <p>The statement is <u>false</u>. The average woman actually has a good deal less water, pound-for-pound, than does the average man. She is about 55% water, he is about 68%.</p> <p>"Proof" means <u>twice</u> the ethanol percentage of the beverage. For example, 80-proof vodka is 40% ethanol.</p>

Aides**Lesson Plan****Instructor Notes**

- Every chemical that is an "alcohol" contains what three elements?

- True or False: Most of the alcohol that a person drinks is absorbed into the blood via the small intestine.

- What is the name of the muscle that controls the passage from the stomach to the lower gastrointestinal tract?

- True or False: Alcohol can pass directly through the stomach walls and enter the bloodstream.

- Multiple Choice: Suppose a man and a woman who both weigh 160 pounds arrived at a party and started to drink at the same time. And suppose that, two hours later, they both have a BAC of 0.10. Chances are

A. he had more to drink than she did.
B. they drank just about the same amount of alcohol.
C. he had less to drink than she did.

- In which organ of the body does most of the metabolism of the alcohol take place?

The three elements common to all alcohols are: carbon, hydrogen and oxygen.

The statement is true. Under normal conditions, about 80% of the ethanol in the stomach will pass through the pyloric valve into the small intestine, from which it will quickly move into the bloodstream.

The muscle is called the **pylorus**, or pyloric valve.

The statement is true. Usually, about 20% of the ethanol a person drinks diffuses through the stomach walls to enter the blood.

Correct answer is A, "more".

The **liver** is where most metabolism takes place.

Aides

Lesson Plan

Instructor Notes

- What is the name of the enzyme that aids the metabolism of alcohol?

- Multiple Choice: Once a person reaches their peak BAC, it will drop at a rate of about ___ per hour.
 - A. 0.025
 - B. 0.015
 - C. 0.010

- True or False: It takes about thirty minutes for the average 175-pound man to "burn off" the alcohol in one 12-ounce can of beer.

Alcohol dehydrogenase is the enzyme that serves as a catalyst for alcohol's metabolism in the liver.

Correct answer is B, "0.015"
(But remember: This is an average value, with wide variations among individuals.)

The statement is false. The average 175-pound man will need 90 minutes to metabolize the alcohol.

One Hour and Ten Minutes

SESSION III
THE LEGAL ENVIRONMENT

SESSION III

THE LEGAL ENVIRONMENT

Upon successfully completing this session, the student will be able to:

- o State and discuss the elements of DWI offenses.
- o Discuss the provisions of the implied consent law.
- o Discuss the relevance of chemical test evidence.
- o Discuss precedents established through case law.

CONTENT SEGMENTS

- A. Basic DWI Statute: Driving While Under The Influence
- B. Implied Consent Law and Presumptions
- C. Illegal Per Se Statute: Driving With A Proscribed Blood Alcohol Concentration
- D. Preliminary Breath Testing
- E. Case Law Review

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Reading Assignments



Display Slide III-O (Session Objectives)



70 Minutes

III LEGAL ENVIRONMENT

(Time varies with the complexity and variation of your state's laws relating to drinking-driving and DWI enforcement).

INSTRUCTOR PLEASE NOTE: The lesson plans for this module are based on a generic set of drinking-driving laws, patterned after the Uniform Vehicle Code. Significant modification may be required to adapt this module to the current statutes of your state.



10 Minutes



Display Overhead III-1

A. Basic DWI Statute: Driving While Under the Influence

- 1. Elements of the offense: it is unlawful for any person to...
 - a. operate or be in actual physical control of...
 - b. any vehicle...
 - c. within this state...
 - d. while under the influence of alcohol and/or any drug.
- 2. In order to arrest someone for a basic DWI violation, officer must have probable cause to believe that all four elements are present.

Discuss meaning/interpretation of "operational/actual physical control."

Discuss meaning of "vehicle".

i.e., public or private property anywhere in the state.



Ask class: "What does under the influence mean?" Probe for a variety of responses.

Note: If DWI is not a criminal offense, burden of proof is less than "beyond a reasonable doubt."

- 3. In order to convict a person of DWI, the arresting officer must establish beyond a reasonable doubt that all four elements were present.
- 4. In particular, the arresting officer must establish that the accused was "under the influence".
 - a. Courts have generally held that "under the influence" means the ability to operate a vehicle has been affected, or impaired.
 - b. To convict a person of DWI, the arresting officer must be able to show that the person's capability of safe operation has been impaired.

B. Implied Consent Law and Presumptions

- 1. The question of how much impairment constitutes too much impairment is not completely clear.
 - a. Some courts have held that impairment of driving to the slightest degree means the person is "under the influence."
 - b. Other courts have insisted on evidence of substantial driving impairment before they will convict someone of DWI.

Emphasize: Students must be prepared to articulate the impairment exhibited by the defendant at the time of the stop.



20 Minutes

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
III-2**

- c. The element of "under the influence" thus historically was (and remains) very difficult to prove.
- 2. The principal purpose of the Implied Consent Law is to encourage people arrested for DWI to submit to chemical test, to provide scientific evidence of alcohol and/or drug influence.
- 3. Key features/elements of the Implied Consent Law generally include:
 - a. Any person who operates a motor vehicle upon the public highways of this state...
 - b. Shall be deemed to have given consent to a chemical test...
 - c. For the purpose of determining the alcohol and/or drug content of that person's blood...
 - d. When arrested for any acts alleged to have been committed while the person was operating or in actual physical control of a vehicle while under the influence of alcohol and/or any drug.
- 4. If a person so arrested refused to submit to the chemical test, no test shall be given.

Write "Implied Consent Law" on chalkboard or flipchart.

NOTE: Present here the information relative to your state.

NOTE: Some states use breath alcohol concentration (BrAC).

Point out that the Implied Consent Law requires the driver to submit to a chemical test(s). The law provides penalties for refusal to submit to the test(s).



Display
Overhead
III-3

- a. However, the law provides that the person's driver's license may be suspended or revoked.
 - b. The provision for the license suspension (or revocation) exists to encourage DWI arrestees to submit to the test, so that valuable chemical evidence may be obtained.
5. Legal presumptions define the significance of scientific chemical test evidence. They are provided by your state's statutes.
- a. If test shows blood alcohol concentration is ___ or more: it shall be presumed that the person is under the influence.
 - b. If test shows BAC is ___ or less: it shall be presumed that the person is not under the influence.
 - c. If test shows BAC is more than ___ but less than ___, there is no presumption as to whether the person is or is not under the influence.
6. Key Point: As far as establishing that the person was "under the influence" is concerned, The weight of the chemical test evidence is presumptive, not conclusive.



Display
Overhead
III-4

The right to refuse the test is not an unlimited right: the license action is the "price" of the refusal.

NOTE: Statutory presumption levels vary from state to state. **Know your state law!**

Insert here: _____ your state statutory levels.

NOTE: Specific laws concerning underage drinkers or commercial motor vehicle operators should be addressed here.

Point out that, even though there is no presumption of alcohol influence in that range, the test result is still competent, admissible evidence.



Display
Overhead
III-5



Display
Overhead
III-6

- a. If there is no evidence to the contrary, the court may accept the legal presumption, and conclude that the person was or was not under the influence on the basis of the chemical test alone.
- b. However, other evidence (such as testimony concerning observations of the accused's driving, demeanor, appearance, speech, etc.) may be sufficient to overcome the presumptive weight of the chemical test.
- c. Question number one: is it possible for a person whose blood alcohol concentration was above the per se or presumptive level to be acquitted of DWI?
- d. Question number two: is it possible for a person whose blood alcohol concentration was below the per se or presumptive level to be convicted of DWI?
- e. Summary point: The chemical test provides presumptive evidence of alcohol influence, but does not provide conclusive evidence.

Example:

- o chemical test result 0.13;
- o arresting officer's testimony concerning defendant's driving, appearance, actions, etc., is sketchy or unclear;
- o defendant and/or other witnesses testify that defendant drove, acted, spoke, etc., in a normal fashion;
- o result: not guilty.

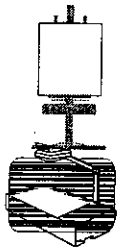
Example:

- o chemical test result 0.05;
- o arresting officer provides clear, descriptive testimony concerning defendant's impaired driving, stuporous appearance, slurred speech, difficulty in balancing, inability to perform field sobriety tests, etc.
- o result: guilty.

Solicit student's questions concerning the nature and legal significance of "presumptive evidence."



5 Minutes



Display
Overhead
III-7

**C. Illegal Per Se Statute:
Driving with a Prohibited
Blood Alcohol Concentration**

1. Illegal Per Se is another drinking-driving offense, related to, but different from DWI.
2. Elements of the Offense: it is unlawful for any person to...
 - a. operate or be in actual physical control of...
 - b. any vehicle...
 - c. within this state...
 - d. while having a blood alcohol concentration at or above state's level.
3. Illegal Per Se makes it an offense, in and of itself, to drive while having a BAC at or above state's level.
 - a. To convict someone of an Illegal Per Se violation, it is not necessary to establish that the driver was under the influence.
 - b. It is sufficient to establish that the driver's BAC was at or above state's level while operating a vehicle in this state.

Instructor please note: If your state does not have an Illegal Per Se law, you may wish to skip this segment.

Write "Illegal Per Se" on chalkboard or flipchart.

Compare and contrast these elements with the elements of DWI.

Point out that "Per Se" roughly translates as "in and of itself."

4. The Illegal Per Se law does not replace the DWI law: the two statutes work side-by-side.
 - a. The two laws define two separate offenses.
 - b. One law makes it an offense to drive while under the influence of alcohol and/or any drug.
 - c. The other law makes it an offense to drive while having more than a certain percentage of alcohol in the blood.
 - d. Since there is an Illegal Per Se law, why is it necessary to retain the old DWI law?

5. For the Illegal Per Se offense, the chemical test result is conclusive evidence.

6. Principal purpose of Illegal Per Se law is to facilitate prosecution of drinking-driving offenders.



Pose the question to the class. Probe for responses until at least the following points have emerged:

- o some suspects refuse to submit to chemical testing;
- o some violators are under the influence of drugs other than alcohol;
- o some are under the influence of alcohol at BACs below state's level.

Contrast with the DWI offense.

NOTE: Instructors must know their state law.

Aides

Lesson Plan

Instructor Notes

- a. The law reduces the state's burden of proof.
 - b. Not necessary to show that defendant was "under the influence."
 - c. Sufficient to show that defendant's BAC was at or above state's level.
7. However, Illegal Per Se law doesn't really make drinking-driving enforcement any easier.
- a. Officer must still have probable cause to believe that the suspect is under the influence before the arrest can be made.
 - b. Implied Consent law requires that suspect already be arrested before the suspect is deemed to have given consent to submit to the chemical test.
 - c. Implied Consent law also requires that the arrest be made for "acts alleged to have been committed while operating a vehicle while under the influence..."
8. Summary point: police officers dealing with drinking-driving suspects must continue to rely primarily on their own powers of detection to determine whether or not an arrest should be made.

NOTE: Instructor should review your state's policy.

i.e., not required to demonstrate that the defendant's ability to drive was affected.

NOTE: Sufficient grounds for making the stop must be articulated.

Remind students that allegation is more than mere suspicion: requires probable cause to believe the offense has been committed.

Aides

Lesson Plan

Instructor Notes

- a. Usually, it is impossible to obtain a legally admissible chemical test result until after the suspect is arrested.
- b. In some cases, suspects will refuse the chemical test after being arrested; then, the case will depend strictly on the officer's observations and testimony.
- c. While making a DWI arrest, an officer should always assume that the suspect will refuse the chemical test.
- d. The officer should strive to organize and present all observations in the written report and in verbal testimony, in such a clear and convincing fashion that the violator will be convicted regardless of whether the test is taken and regardless of the test result.

D. Preliminary Breath Testing: Obtaining an indication of suspect's BAC prior to arrest

- 1. Purpose of the law: The preliminary breath testing law permits a police officer to request a DWI suspect to submit to an on-the-spot breath test prior to arresting the suspect for DWI.
- 2. Application of the law: When an officer has reason to believe...

NOTE: Stress the importance of thorough documentation, i.e., "The DWI Investigative Field Notes" that will be explained in Session IV.

Instructor please note: If your state does not have a preliminary breath testing law, skip this segment.



5 Minutes

Aides

Lesson Plan

Instructor Notes

- a. From the manner in which a person is operating or has operated a motor vehicle...
 - b. That the person has or may have committed the offense of operating while under the influence...
 - c. The officer may request that person to provide a sample of breath for a preliminary test of the alcohol content of the blood...
 - d. Using a device approved for this purpose.
3. Application of preliminary breath test results.
- a. The preliminary breath test shall be used for helping to determine whether an arrest should be made.
 - b. Results of the preliminary breath test may not be used as evidence against the defendant in court.
4. There may be penalties for refusal to submit to the preliminary breath test.
- a. License action (suspension, etc.)
 - b. Fine
 - c. Other penalty provisions

Please note: Preliminary breath testing laws differ significantly from one state to another. Substantial modification of this segment of lesson plans may be needed to reflect your state's laws accurately.

Instructor please note:
Outline the statutory/
administrative penalties for
PBT refusal in your state, if
any.

Aides

Lesson Plan

Instructor Notes



30 Minutes

E. Case Law Review

The following cases are landmark court decisions relevant to the admissibility of the SFSTs including Horizontal Gaze Nystagmus.

Challenges to the admissibility have been based on:

1. Scientific validity and reliability.
2. Relationship of HGN to specific BAC level.
3. Officer training, experience, and application.

The National Traffic Law Center (NTLC) has a list of every state's Appellate Court/ Supreme Court case addressing HGN and SFST issues. The materials are available to law enforcement at www.ndaa.org/apri/NTLC or by phone (703) 549-4253.

See Blake case.

See Loomis case.

See Murphy case.
See Homan case.
See Smith

NOTE: Prepare the following matrix on the chalkboard or flipchart using Blake, Loomis, Murphy, Homan, and Smith. Refer to Attachment A to select case law applicable to your state.



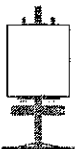
<u>CASE NAME</u>	<u>STATE</u>	<u>YEAR</u>	<u>APPELLATE/ SUPREME COURT</u>	<u>ADMISSIBLE</u>	<u>EVIDENCE OF BAC</u>
Blake					
Loomis					
Murphy					
Homan					
Smith					

4. State vs. Blake

- a. This is considered a landmark case on HGN, because it was the **first State Supreme Court-level** ruling.

Write "Arizona; 1986" opposite **Blake** on the matrix.

Place a large asterisk on the matrix next to **Blake**.



Aides

Lesson Plan

Instructor Notes

- b. The Arizona Supreme Court found that HGN satisfies the **Frye** standards for evidence to corroborate, or attack, the issue of a suspect's impairment.
- c. In effect, in the **Blake** case, the Arizona Supreme Court took judicial notice of HGN: Henceforth, in Arizona, it is not necessary to introduce expert scientific testimony to secure the admissibility of HGN.
- d. The court also set standards governing the training of officers who would be qualified to testify about HGN.
- e. The Court also explicitly found that HGN **cannot** be used to establish BAC quantitatively in the absence of a chemical test.

5. People vs. Loomis

- a. Court held that the officer was not entitled to testify as either a lay or expert witness about HGN, or to give his opinion about the defendant's BAC.
- b. Court held that HGN is new form of scientific evidence that will be allowed only when there is preliminary showing of its general acceptance in the scientific community.

Write "**Frye Standards**" on the chalkboard or flipchart.
Clarification: The **Frye** case (decided by the U.S. Supreme Court) set the standards governing the admissibility of "new" scientific evidence.

Under "Admissibility" opposite **Blake**, write "**Absolutely YES**".

Under "Evid of BAC" opposite **Blake**, write "**Absolutely NO**".

Write "**California; 1984**" opposite **Loomis** on the matrix.

Point out that the arresting officer attempted to use the onset angle to give a quantitative estimate of BAC. The court would not accept it.

Under "Evid of BAC" opposite **Loomis**, write **NO**.

Point out that the officer's testimony clearly demonstrated that he was not properly trained in HGN, and didn't really understand how the test is to be given.



Aides

Lesson Plan

Instructor Notes



6. State vs. Murphy

- a. The court ruled that the results of a HGN test could be admitted into evidence because HGN was one of the SFSTs and the observations of intoxication obtained from the test were objective in nature.
- b. The court noted that the officer was properly trained to administer the test and that there was no need that an officer be specially qualified to be able to interpret the results.
- c. The court also ruled that HGN test results could not be used to determine a specific BAC level.

7. State vs. Homan

- a. The court ruled that SFSTs conducted in a manner that departs from the methods established by NHTSA are "inherently unreliable."
- b. The court noted the statement in the NHTSA Student Manual which states "if any of the SFST elements is changed, the validity of the tests is compromised."

Under "Admissibility?" opposite **Loomis**, write **NO**.

Write "Iowa; 1990" opposite **Murphy** on the matrix.

Under "Appellate Court Case" write "YES".

Under "Admissibility" opposite **Murphy** write "YES".

Under "Evidence of BAC" write "NO".

Write "Ohio; 2000" opposite **Homan** on the matrix.

Under "Supreme/Appellate Court" write "YES".

Under "Admissibility" write "NO".

Under "Evidence of BAC" write "NO".

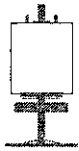
Note: "FOR TRAINING PURPOSES, THE SFSTs ARE NOT AT ALL FLEXIBLE. THEY MUST BE ADMINISTERED EACH TIME, EXACTLY AS OUTLINED IN THE COURSE."



Aides

Lesson Plan

Instructor Notes



- c. This decision was based upon an older edition of this manual and was a strict interpretation by the court. The phrase in question only applied to the use of SFSTs for training purposes.

- 8. Smith vs. Wyoming
 - a. For the purpose of establishing probable cause, an officer may testify to the results of field sobriety tests (including HGN) if it is shown that the officer has been adequately trained and conducted them in substantial accordance with that training.

 - b. Deficiencies in the administration of the SFSTs go to the weight accorded the evidence and not to its admissibility.

- 9. Summary of HGN Case Law.

Regarding Homan and State vs. Schmitt, 101 Ohio St 3d 19, 2004.

Also: See SFST Instructor's Manual, Session VII, page 4, Instructor's Notes column.

See the Administrator's Guide, page 8, number 8.

Note: The Homan decision does not preclude officers from testifying to observations even if SFSTs are barred. See *Ohio v. Schmitt*, 101 Ohio St.3d 79, 2004.

Write "Wyoming; 2000" opposite **Smith** on the matrix.

Under "Supreme/Appellate Court" write "SUPREME".

Under "Admissibility" opposite Smith write "YES".

Under "Evidence of BAC" opposite Smith write "N/A".

Solicit students' questions and comments about case law.

Aides

Lesson Plan

Instructor Notes

- a. The prevailing trend, in recent years, is for courts to admit HGN as evidence of impairment, provided the proper scientific foundation has been laid.
- b. But courts consistently reject all attempts to introduce HGN as evidence of a quantitative BAC.

NOTE: For further information, contact: American Prosecutors Research Institute's National Traffic Law Center, 99 Canal Center Plaza, Suite 510, Alexandria, Virginia, 22314, (703) 549-4253 to obtain a copy of Frye v. Federal Rules, May 1994 (an in-depth discussion of Frye).

10. Case Law of Relative Importance.

Write each case on chalkboard or flipchart.

a. State vs. Ricke

Write "AZ; 1989" on chalkboard or flipchart.

- (1) The court held that HGN test results could be admitted into evidence to **corroborate chemical test evidence** that a person was operating a motor vehicle with a BAC level at or above 0.10.

Write "In An Illegal Per Se Case" on chalkboard or flipchart.

- (2) The court also held that HGN results could be admitted as **independent proof** for the offense of DWI.

Cannot be used as evidence of specific BAC level.

b. State vs. City Court of City of Mesa

Write "AZ; 1990" on chalkboard or flipchart.

- (1) The court ruled that in cases where there is no chemical test to determine a BAC level, HGN test results can be admitted the same as of field sobriety tests to show a **neurological dysfunction**, one cause of which could be the

Write "No Chemical Test - HGN Admissible".

Write on chalkboard or flipchart - "Cannot be used as evidence of specific BAC level".

NOTE: Use Attachment B for any relevant discussion.



Fifty Minutes

SESSION IV

OVERVIEW OF DETECTION,
NOTE TAKING AND TESTIMONY

SESSION IV

OVERVIEW OF DETECTION, NOTE TAKING AND TESTIMONY

Upon successfully completing this session, the student will be able to:

- o Describe the three phases of detection.
- o Describe the tasks and key decision of each phase.
- o Discuss the uses of a standard note taking guide.
- o Discuss guidelines for effective testimony.

CONTENT SEGMENTS

- A. Three Phases of Detection
- B. DWI Investigation Field Notes
- C. Courtroom Testimony

LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Reading Assignments



Display Slide IV-O (Session Objectives)

Aides

Lesson Plan

Instructor Notes



50 Minutes



15 Minutes



**Display
Overhead
IV-1**



**Display
Overhead
IV-2**

**IV OVERVIEW OF
DETECTION, NOTE TAKING
AND TESTIMONY**

A. Three Phases of Detection

1. This segment focuses on the job of DWI detection.
 - a. DWI detection defined as - "The entire process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DWI violation."
 - b. Detection begins when the officer develops the first suspicion that a DWI violation possibly is occurring.
 - c. Detection ends when the officer finally decides whether there is or is not sufficient probable cause to arrest the suspect for DWI.
2. DWI detection contacts involve three phases.
 - a. In Phase One, the officer observes the suspect operating the vehicle.
 - b. In Phase Two, after the officer has stopped the vehicle, there usually is an opportunity to observe and speak with the suspect, face-to-face.

Write on chalkboard or flip chart - "Focus: DWI Detection"

Point out that other definitions sometimes are given for "DWI Detection", but that this particular definition will be used for this course.

Point out that the initial suspicion may be very slight in some cases, and may be very strong in others.

Point to Phase One on slide.

Point to Phase Two on slide.

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
IV-3**

- c. In Phase Three, the officer usually has an opportunity to administer some formal, structured tests to the suspect, to evaluate the suspect's degree of impairment.
3. Each detection phase involves a major decision.
- a. Phase One: Decision -- is there sufficient cause to command the suspect to stop?
 - b. Phase Two: Decision -- is there sufficient cause to instruct the suspect to step from the vehicle for further investigation?
 - c. Phase Three: Decision -- is there sufficient probable cause to arrest the suspect for DWI?
4. At any particular moment, any of these three major decisions could have three different outcomes.
- a. Possible Decision #1: "Yes... Do it Now".

Point to Phase Three on slide. Point out that these formal structured tests may include chemical (breath) tests as well as the more traditional field sobriety tests.

Write the major decisions (Stop? Exit? Arrest?) on chalkboard or flipchart.

Point out that merely stopping the suspect doesn't necessarily mean that the officer is committed to arresting the suspect for DWI.

Point out that, by instructing the suspect to exit the vehicle, the officer still is not committed to making the DWI arrest. However, the officer clearly suspects that there is a strong possibility that the driver is under the influence.

Emphasize that this decision is based on the accumulation of evidence from all three phases, and represents the culmination of the detection process.

Examples:
o Phase One (Vehicle)- yes, there are reasonable grounds to stop that vehicle.

Aides

Lesson Plan

Instructor Notes

b. Possible Decision #2:
"Wait...look for additional evidence."

c. Possible Decision #3:
"No...Don't Do It."

o Phase Two (Person) - yes, there is enough reason to suspect alcohol/drug impairment to justify getting the driver out of the vehicle for further investigation.

o Phase Three (Tests) - yes, there is probable cause to believe the driver is DWI.

Examples:

o Phase One - don't stop the driver yet; keep following the vehicle to watch the operator's driving a bit longer.

o Phase Two - don't get the driver out of the car yet; keep talking and watching them a bit longer.

o Phase Three - don't arrest the driver yet; administer another field sobriety test before deciding.

Examples:

o Phase One - No, there are no grounds for stopping that driver.

o Phase Two - No, there isn't enough evidence of DWI to justify administering field sobriety tests.

o Phase Three - No, there is not sufficient probable cause to believe this driver has committed DWI.

5. Summary of Detection Phases.

a. Sometimes, there are DWI detection contacts in which Phase One is absent: that is, where there is no evidence of DWI violation based on the officer's observation of the vehicle in motion.

b. Sometimes, there are contacts in which Phase Three never occurs: that is, where no formal tests are administered to the suspect.

c. At each phase of detection, the officer must determine whether there is sufficient evidence to provide the "reasonable suspicion" necessary to proceed to the next step in the detection process.

(1) It is always the officer's duty to carry out whatever phases are appropriate, to make sure that all relevant evidence of DWI is brought to light.

(2) The ultimate decision to arrest or not arrest for DWI is based on the accumulation of all relevant evidence, from all phases.



Ask representative students to suggest situations in which Phase One might be absent. (examples: crash scene; roadblock; motorist assistance contact)



Ask for examples (e.g., suspect is grossly intoxicated; suspect is seriously injured; suspect refuses to submit to formal tests)

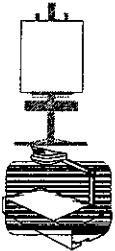
Solicit students' questions concerning the overview of detection phases.



Display
Overhead
IV-4



20 Minutes



Display
Overhead
IV-5

B. DWI Investigation Field Notes

1. Throughout this course, students will have opportunities to practice observing, recording and describing evidence associated with the detection phases.
2. The evidence gathered during the detection process is vital to establish the elements of the violation, and to support prosecution of the offense.
3. This evidence is observational in nature, and therefore is extremely short-lived.
4. Officers must be able to recognize and act on their own observations. But officers also must be able to recall those observations, and describe them clearly and convincingly, to secure a conviction.
 - a. Officer is inundated with much evidence of DWI: sights, sounds, smells, etc.
 - b. Officer recognizes this evidence, sometimes subconsciously, and bases arrest decision on it.
 - c. But later, officer must be able to recollect this observational evidence.
 - d. And must be able to express the evidence clearly in any written report or oral testimony.

Point out how the practice opportunities will be provided (e.g., film segments, classroom demonstrations, etc.).

Write on chalkboard or flipchart: "observations -- short-lived evidence".

Display slide IV-5, emphasizing two key detection performance requirements.



**Display
Overheads
IV-6A
through
IV-6D**

5. Officers need a system for documenting their observations in notes at the scenes of DWI investigations.

a. Standard Note-Taking Guide.

(1) Section I: Suspect/
Vehicle/Location.

(2) Section II: Detection
Phase One.

(3) Section III: Detection
Phase Two.

(4) Section IV: Detection
Phase Three.

C. Courtroom Testimony

1. Although the majority of DWI cases do not actually come to trial, the arresting officer must be fully prepared to testify in court.

NOTE: This does not preclude an agency from developing their own note-taking guide.

Refer to Attachment A, "DWI Investigative Field Notes" (Copy and distribute to students.)

Note: Advise students that each section of the note-taking guide will be broken down and thoroughly explain in subsequent sessions.

Briefly indicate the types of notes that should be taken in each section of the standard note-taking guide.

Point out that the specific contents of the guide will be clarified as the training progresses through the three phases of detection.

Point out that the students will use copies of the standard guide to practice taking notes on DWI detection evidence.

Solicit student's questions concerning note-taking procedures.



15 Minutes

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
IV-7**

2. Testimonial evidence in DWI cases usually is the only way to establish that the accused was in fact the driver of the vehicle alleged to have been involved in the incident.
3. Testimonial evidence also may be the primary and sometimes the only means of establishing that the accused was impaired by alcohol and/or other drugs.
4. Even when scientific evidence is available, supportive testimonial evidence will be required to permit introduction of that scientific evidence in court.
5. Testimonial evidence is only as good as it is clear and convincing.
6. First Requirement: Prepare Testimony
 - a. Testimony preparation begins at the time of the incident.
 - o recognize significant evidence;
 - o compile complete, accurate notes;
 - o prepare complete, accurate report.
 - b. Testimony preparation continues prior to trial.
 - o review notes;

NOTE: Discuss your state's administrative license suspension hearing procedure.

NOTE: Emphasize the importance of documentation in preparation for court testimony.

Point out that students will have opportunities to practice giving testimony, as the training progresses through the three detection phases.



Display
Overhead
IV-8

- o review case jacket/file;
 - o mentally organize elements of offense, and the evidence available to prove each element;
 - o mentally organize testimony to convey observations clearly and convincingly.
- c. Prior to the trial, discuss the details of the case and testimony with the prosecutor assigned to the case.

7. Testimony should be organized chronologically and should cover each phase of the incident.

- a. Initial observation of vehicle and/or suspect.
- b. Reinforcing cues, maneuvers or actions, observed after signaling suspect to stop, but before suspect's vehicle came to a complete stop.

Point out that a pretrial conference is recommended. However, the decision whether or not to conduct one is controlled by the prosecutor. The "conference" may occur 5 minutes prior to the trial.

Point out that, in many instances, the prosecutor will control the sequence of testimony. However, the officer should organize testimony in a logical time-sequence, i.e., to present facts and observations in the order in which they occurred.

NOTE: A "cue" is defined as a "tip".

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> c. Clues, statements and other evidence obtained during officer's initial face-to-face contact with suspect. d. Results of SFSTs administered to the suspect. e. The arrest itself; including procedures used to inform suspect of arrest, admonish suspect of rights, etc. f. Suspect's actions and statements subsequent to the arrest. g. Observation of suspect subsequent to the arrest. h. The request for the chemical test; including procedures used, admonition of rights and requirements, etc. i. The administration and results of the chemical test (if applicable). j. Interview of suspect. 	<p data-bbox="992 363 1365 457">NOTE: A "clue" is defined as something that leads to the solution of a problem.</p> <p data-bbox="980 1026 1370 1087">To be included if arresting officer was also testing officer.</p> <p data-bbox="980 1192 1317 1287">Solicit student's questions concerning testimonial requirements.</p>

One Hour and Thirty Minutes

SESSION V

PHASE ONE: VEHICLE IN MOTION

SESSION V

PHASE ONE: VEHICLE IN MOTION

Upon successfully completing this session, the student will be able to:

- o Identify typical cues of Detection Phase One.
- o Describe the observed cues clearly and convincingly.

CONTENT SEGMENTS

LEARNING ACTIVITIES

- | | |
|--|---------------------------------|
| A. Overview: Tasks and Decision | o Instructor-Led Presentations |
| B. Initial Observations: Visual Cues of Impaired Operation (Automobiles) | o Video Presentation |
| C. Initial Observations: Visual Cues of Impaired Operation (Motorcycles) | o Video Presentation |
| D. Recognition and Description of Initial Cues | o Instructor-Led Demonstrations |
| E. Typical Reinforcing Cues of the Stopping Sequence | o Students' Presentations |
| F. Recognition and Description of Initial and Reinforcing Cues | |



Display Slide V-O (Session Objectives)



90 Minutes



5 Minutes

Display
Overhead V-1

V PHASE ONE: VEHICLE IN MOTION

A. Overview: Tasks and Decision

1. DWI Detection Phase One, Vehicle in Motion, consists of the initial observation of vehicular operation, the stop decision and the observation of the stop.
 - a. The initial observation of vehicular operation begins when the officer first notices the vehicle and/or the driver.
 - b. If the initial observation discloses vehicle maneuvers or human behaviors that may be associated with alcohol influence, the officer may develop an initial suspicion of DWI.
2. Based upon initial observation of the vehicle operation, the officer must decide whether there is reasonable suspicion to stop the vehicle.
 - a. Alternatives to stopping the vehicle include:

Point out block No. 1 on the slide.



Pose this question:
"What are some of the kinds of things that might first draw your

attention to a vehicle?"

Examples:

- o moving traffic violation
- o equipment violation
- o registration sticker (expired)
- o other driving actions
 - drifting within lane
 - slower than normal speed
- o drinking in vehicle

Point out the decision on the slide.

Aides**Lesson Plan****Instructor Notes**

- o delaying the stop/no stop decision, in order to continue observing the vehicle.
 - o disregarding the vehicle.
- b. Whenever there is a valid reason to stop a vehicle, the officer should be alert to the possibility that the driver may be impaired by alcohol and/or other drugs.
- 3. Once the stop command has been communicated to the suspect driver, the officer must closely observe the driver's actions and vehicle maneuvers during the stopping sequence.
 - a. Sometimes, significant evidence of alcohol influence comes to light during the stopping sequence.
 - b. In some cases, the stopping sequence might produce the first suspicion of DWI.
 - c. Drivers impaired by alcohol and/or other drugs may respond in unexpected and dangerous ways to the stop command.



Ask class to suggest circumstances under which it would be appropriate to delay the stop decision to continue to observe the vehicle.

Emphasize that the officer may not have an explicit reason to suspect impairment at this time.

Point out block No. 2 on the slide.

Emphasize officer's need to be alert for own safety.



40 Minutes

Display
Overhead V-2

B. Initial Observations: Visual Cues of Impaired Vehicle Operation

1. Drivers who are impaired by alcohol and/or other drugs exhibit common effects or signs of impairment.
 - a. Slowed reactions.
 - b. Increased risk taking (impaired judgment).
 - c. Impaired vision.
 - d. Poor coordination.

2. These common effects of alcohol on the driver's mental and physical faculties lead to predictable driving violations and vehicle operating characteristics.

The following video segments were produced to show a variety of traffic stop situations being performed by different law enforcement agencies. The goal of this video is to depict the cues associated with impaired driving. Trainees should be guided by their own agency's policy regarding traffic stops, officer safety tactics, and professional conduct.

NOTE: The national Drug Recognition Expert (DRE) program has increased awareness of the DWI-drug problem.



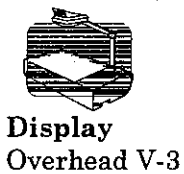
Use the following types of questions to involve the students in a discussion of driving violations/characteristics associated with alcohol influence (all vehicles):

- o What violations may result from slowed reactions?
- o What violations might result from impaired judgment?
- o What violations might result from impaired vision?
- o What violations might result from poor coordination?

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Lesson Plan

Instructor Notes



- 3. The National Highway Traffic Safety Administration sponsored research to identify the most common and reliable initial indicators of DWI.
 - a. Research identified 100 cues, each providing a high probability indication that the driver is under the influence.
 - b. The list was reduced to 24 cues during three field studies involving hundreds of officers and more than 12,000 enforcement stops.
 - c. The driving behaviors are presented in four categories:
 - (1) Problems in maintaining proper lane position. [P=.50-.75]
 - (2) Speed and braking problems. [P=.45-.70]

ANACAPA Sciences, DOT HS 808 654, 1997.

The cues presented in these categories predict a driver is DWI at least 35 percent of the time.

Generally, the probability of DWI increases substantially when a driver exhibits more than one of the cues.

Note: There is a brochure published by NHTSA that contains these cues. The title is "The Visual Detection of DWI Motorists" DOT HS 808 677.

Weaving
Weaving across lane lines
Straddling a lane line
Swerving
Turning with a wide radius
Drifting
Almost striking a vehicle or other object

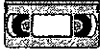
Stopping problems (too far, too short, or too jerky)
Accelerating or decelerating for no apparent reason
Varying speed
Slow speed (10+ mph under limit)

Aides	Lesson Plan	Instructor Notes
	<p>(3) Vigilance problems. [P=.55-.65]</p> <p>(4) Judgement problems. [P=.35-.90]</p> <p>d. The research also identified 10 post stop cues. [P > .85]</p>	<p>Driving in opposing lanes or wrong way on one way Slow response to traffic signals Slow or failure to respond to officer's signals Stopping in lane for no apparent reason Driving without headlights at night Failure to signal or signal inconsistent with action</p> <p>Following too closely Improper or unsafe lane change Illegal or improper turn Driving on other than designated roadway Stopping inappropriately in response to officer Inappropriate or unusual behavior (throwing objects, arguing, etc.) Appearing to be impaired</p> <p>Difficulty with motor vehicle controls Difficulty exiting the vehicle Fumbling with driver license or registration Repeating questions or comments Swaying, unsteady, or balance problems Leaning on the vehicle or other object Slurred speech Slow to respond to officer/ officer must repeat Provides incorrect information, changes answers Odor of alcoholic beverage from the driver</p>

Aides

Lesson Plan

Instructor Notes



Display
Overhead V-4

e. Explanation and illustration of the 24 detection cues.

C. Initial Observations: Visual Cues of Impaired Vehicle Operation (Motorcycles)

1. Research has identified driving impairment cues for motorcyclists.

a. Excellent Cues (50% or greater probability)

- o Drifting during turn or curve
- o Trouble with dismount
- o Trouble with balance at a stop
- o Turning problems (e.g., unsteady, sudden corrections, late braking, improper lean angle)
- o Inattentive to surroundings
- o Inappropriate or unusual behavior (e.g., carrying or dropping object, urinating at roadside, disorderly conduct, etc.)
- o Weaving

b. Good Cues (30 to 50% probability)

- o Erratic movements while going straight

Show video tape. Allow 16.2 minutes.

ANACAPA Sciences, DOT HS 807 839, 1993.

Aides

Lesson Plan

Instructor Notes

- o Operating without lights at night
 - o Recklessness
 - o Following too closely
 - o Running stop light or sign
 - o Evasion
 - o Wrong way
2. Relationship of Visual Cues to impaired divided attention capability.
- a. Driving is a complex task, composed of many parts:
- o steering
 - o controlling accelerator
 - o signaling
 - o controlling brake pedal
 - o operating clutch (if applicable)
 - o operating gearshift (if applicable)
 - o observing other traffic
 - o observing signal lights, stop signs, other traffic control devices
 - o making decisions (whether to stop, turn, speed up, slow down, etc.)
 - o many other things

Point out that it is important to understand how the effects of alcohol are exhibited in driving, so that officers can recognize the significance of their visual observations.

? Ask students to name the various parts of the driving task. List them on the chalkboard as they are named.



Display
Overhead V-5

- b. In order to drive safely, a person must be able to divide attention among all of these various activities.
- c. Under the influence of alcohol or many drugs, a person's ability to divide attention becomes impaired.
- d. The impaired person tends to concentrate on certain parts of driving, and to disregard other parts.
- e. Some of the most significant evidence from all 3 phases of DWI detection can be related directly to the effects of alcohol and/or other drugs on divided attention ability.

Example: Person stops at a green light (scene from previous video tape.)

- o Alcohol has impaired ability to divide attention.
- o Driver is concentrating on steering and controlling the accelerator and brake.
- o Does not respond to the particular color of the traffic light.

Point out that the concept of divided attention is especially important during personal contact with DWI suspects and during pre-arrest screening of them.

NOTE: Show video first. Use slide for review. Allow 12 minutes.



20 Minutes



Display
Overhead V-6

D. Initial Cues, Recognition and Description

- 1. The task of making initial observations of vehicle operation is the first step in the job of DWI detection.



Display
Overhead V-7

2. Proper performance of that task demands two distinct but related abilities:
 - a. Ability to recognize evidence of alcohol and/or other drug influence.
 - b. Ability to describe that evidence clearly and convincingly.
3. It is not enough that a police officer observe and recognize symptoms of impaired driving. The officer must be able to articulate what was observed so that a judge or jury will have a clear mental image of exactly what took place.
4. Improving the ability to recognize and clearly describe observational evidence requires practice.
 - a. It isn't practical to have impaired drivers actually drive through the classroom.
 - b. The next best thing is to use film (video tape) to portray typical DWI detection contacts.
5. Procedures for practicing cue recognition and description.
 - a. All students view brief video segments illustrating possible DWI violations.

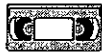
Emphasize that observational evidence is of little value if the officer cannot make the judge or jury "see" what the officer saw.

Make sure all students understand the procedures that will be followed during the practice sessions.

Aides

Lesson Plan

Instructor Notes



- b. Following the video segment, a few minutes will be given to allow all students to write notes on what was observed.
- c. One or more students will be called forth to "testify" concerning what was observed.
- d. Class will critique the "testimony" in terms of how clearly and convincingly it conveys what was actually observed.
- e. Goal is to choose words carefully and provide as much detail as necessary, to construct an accurate mental image of the observations.

6. Video Segment No. 1
("Leaving the Shopping Center")

7. Testimony of Video Segment No. 1. ("Leaving the Shopping Center")

- a. Key points to be elicited:
 - o Weather/traffic conditions
 - o Overshoots stop sign
 - o Makes wide right turn

Hand out copies of the standard note-taking guide.

Emphasize that students are to use the guide to compile notes on their observations of the film segments.

Emphasize that the purpose of the critique is not to embarrass anyone, but rather to help everyone become more skilled at providing clear, descriptive testimony.

Show Video Segment #1.

Allow two minutes for students to compile notes.

Select a representative student to come forward and "take the witness stand," facing the class.

Elicit testimony as follows:
"Officer, you have been sworn. Please tell the court exactly what you observed at the time and place in question.

Allow the students to refer to their notes, if so desired..

Aides

Lesson Plan

Instructor Notes



- o Causes bicyclist to swerve

When student completes testimony ask: "Officer, do you have anything else to add?"

Once student indicates that there is nothing further to add, ask the class to comment on the clarity and completeness of the testimony, and to add any important details that were left out.

Continue to prompt the class to offer comments until all of the key points have been notes.

If so desired and appropriate, repeat the showing of Video Segment No. 1 to point out the key details.

- 8. Video Segment No. 2 ("The Red SUV")

Show Video Segment #2. Allow two minutes for students to compile notes.

- 9. Testimony on Video Segment No. 2.

Select a representative student to come forward to "testify".

Allow student to refer to notes.

- a. Key points to be elicited:

Probe for any additional details, or more descriptive language, in the testimony.

- o Weather/traffic conditions
- o Wrong directional light on
- o Sits on green arrow
- o Turns on red light
- o Cuts turn short

Solicit comments from the class.

Stress the importance of the particular words used to describe the subject vehicle's motion.



5 Minutes



Display
Overhead V-8

- o Right wheels leave roadway
- o Drifts first to left then right
- o Crosses center line
- o Slow response to stop command

E. Typical Reinforcing Cues of the Stopping Sequence

1. After the command to stop is given, the alcohol impaired driver may exhibit additional important evidence of DWI.
2. Some of these cues are exhibited because the stop command places additional demands on the driver's ability to divide attention.
 - a. The signal to stop creates a new situation to which the driver must devote some attention.

Point out that words such as "swerving," "drifting," etc., convey a powerful and clear mental image of how the vehicle moved, while terms such as "erratic," "abnormal," etc., are essentially non-descriptive.

Point out that it is permissible and desirable for the officer to use hand movements, along with verbal testimony, to convey clearly how the vehicle moved.

If desired and appropriate, repeat the showing of video segment #2.



Ask students to suggest possible cues that might be observed after the stop command that might reinforce the initial suspicion of DWI.

Point out here the dangers inherent with fleeing operators. If time allows, review agency's pursuit policy.

i.e., emergency flashing lights, siren, etc., demand and divert the suspect's attention.



Display
Overhead V-9



20 Minutes

- b. Signal to stop requires the driver to turn the steering wheel, operate the brake pedal, activate the signal light, etc.
- c. As soon as officer gives the stop command, the suspect's driving task becomes more complex.
- d. If suspect is under the influence, the suspect may not be able to handle this more complex driving very well.

3. It is the officer's responsibility to capture and convey the additional evidence of impairment that may be exhibited during the stopping sequence.

- a. Requires ability to recognize evidence of alcohol and/or other drug influence.
- b. Requires ability to describe that evidence clearly and convincingly.

F. Initial and Reinforcing Cues Recognition and Description

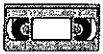
- 1. Procedures for practicing cue recognition and description:
 - a. The next two video segments combine all three elements of DWI Detection Phase One.

Emphasize that turning on the patrol vehicle's emergency lights creates a simple test of the suspect's driving impairment.

Aides

Lesson Plan

Instructor Notes



- b. Each segment begins with the initial observation of the vehicle in operation.
 - c. In each segment, the decision to stop the vehicle is made.
 - d. Each segment concludes with the observation of the stop.
 - e. Following each segment, a few minutes will be given to allow students to gather thoughts and compile notes.
 - f. Students will be called upon to "testify" concerning what was observed, both prior to and after the stop command.
 - g. Class will constructively critique the "testimony."
2. Video Segment No. 3.
("The Sliding Sports Car").
3. Testimony on Video Segment No. 3.
- a. Key points to be elicited concerning observations prior to the stop command:

Standard note-taking guide to be used to compile notes.

Make sure all students understand the procedures.

Show Video Segment #3.

Allow two-three minutes for the students to compile notes.


Select a representative student to come forward to "testify".

Allow students to refer to notes.

Aides

Lesson Plan


Instructor Notes

	<ul style="list-style-type: none"> o Weather/traffic conditions/road surface o Vehicle skids past stop sign o Vehicle makes wide right turn o Vehicle stops abruptly <p>b. Key points to be elicited concerning observations <u>subsequent</u> to the stop command:</p> <ul style="list-style-type: none"> o Subject vehicle pulls sharply onto grass (front wheels on grass) shoulder. o Abruptly veers onto the shoulder (without signaling) and makes hard, quick stop. o Parks at angle to roadway. <p>4. Video Segment No. 4. ("The Impatient Driver")</p> <p>5. Testimony on Video Segment No. 4.</p> <p>a. Key points to be elicited concerning observations <u>prior</u> to the stop command:</p>	<p>Instruct students as follows: "Officer, first tell us exactly why you signaled the driver to stop." Make sure student confines this stage of testimony strictly to what was observed prior to the stop command.</p> <p>Next, instruct as follows: "Officer, now tell us exactly what you observed after you turned on the patrol vehicle's emergency lights."</p> <p>Solicit class comments concerning details or possible improvements to the student's testimony.</p> <p>If desired and appropriate, repeat the showing of video segment #3.</p> <p>Show Video Segment #4.</p> <p>Allow two-three minutes for the students to compile notes.</p> <p>Select a representative student to come forward to "testify".</p> <p>Allow student to refer to notes.</p>
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Aides

Lesson Plan

Instructor Notes

	<ul style="list-style-type: none"> o Weather/traffic conditions/road surface o Turn signal light turns red. o Vehicle pulls around stopped vehicle, makes improper turn. o Turns through red turn light without signaling. <p>b. Key points to be elicited concerning observations <u>subsequent</u> to stop command:</p> <ul style="list-style-type: none"> o Slow response to the stop command (travels approximately 500 yards before stopping). o Weaving in lane and across centerline. <p>6. Video Segment No. 5. ("Half In The Bag")</p> <p>7. Testimony on Video Segment No. 5.</p> <p>a. Key points to be elicited concerning observations <u>prior</u> to the stop command:</p> <ul style="list-style-type: none"> o Weather/traffic conditions. o Fail to stop for stop sign. o Cuts turn short. 	<p>Instruct student to testify first concerning everything observed prior to the stop command, and then to everything observed after the stop command.</p> <p>Solicit class comments concerning details or possible improvements to the student's testimony.</p> <p>If desired and appropriate, repeat the showing of video segment #4.</p> <p>Show Video Segment #5.</p> <p>Allow two-three minutes for the students to compile notes.</p> <p>Select a representative student to come forward to "testify".</p> <p>Allow student to refer to notes.</p> <p>Instruct student to testify first concerning everything observed prior to the stop command, and then to everything observed after the stop command.</p>
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Aides

Lesson Plan

Instructor Notes

- o Passenger throws trash at road sign.

- b. Key points to be elicited concerning observations subsequent to stop command:
 - o Slow response to the stop command.

One Hour and Thirty Minutes

SESSION VI

PHASE TWO: PERSONAL CONTACT

SESSION VI

PHASE TWO: PERSONAL CONTACT

Upon successfully completing this session, the students will be able to:

- o Identify typical clues of Detection Phase Two.
- o Describe the observed clues clearly and convincingly.

CONTENT SEGMENTS

- A. Overview: Tasks and Decision
- B. Typical Investigation Clues of the Driver Interview
- C. Recognition and Description of Investigation Clues
- D. Interview/Questions Techniques
- E. Recognition and Description of Clues Associated With the Exit Sequence

LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Video Presentation
- o Instructor-Led Demonstrations
- o Student's Presentations



Display Slide VI-O (Session Objectives)



90 Minutes



5 Minutes



Display
Overhead
VI-1

VI PHASE TWO: PERSONAL CONTACT

A. Overview: Tasks and Decision

1. DWI Detection Phase Two, Personal Contact, consists of:
 - o The face-to-face observation and interview of the driver while still in the vehicle.
 - o The decision to instruct the driver to exit the vehicle.
 - o The observation of the driver's exit from the vehicle.
- a. The interview/observation of the driver begins as soon as the suspect vehicle and patrol vehicle have come to complete stops, continues through the officer's approach to the suspect vehicle, and involves all conversation between the officer and the suspect prior to the suspect's exit from the vehicle.
- b. Prior to any face-to-face observation and the interview of the driver, the officer may already have developed a suspicion that the driver is impaired, based on the observations of the vehicle operation and of the stop.

Point out block No. 1 on the slide.

Aides

Lesson Plan

Instructor Notes

- c. Alternatively, the vehicle operation and the stop may have been fairly normal, and the officer may have no particular suspicion of DWI prior to the face-to-face contact.

 - d. Regardless of what evidence may have come to light during Detection Phase One, the initial face-to-face contact between the officer and the suspect usually provides the first definite indications that alcohol impairment may be present.
2. Based upon the interview and face-to-face observation of the driver, and upon the previous observations of the vehicle in motion, the officer must decide whether to instruct the suspect to exit the vehicle.



Ask students to suggest situations where this might be the case.

Examples:

- o Stop for tail light violation, with no moving violation.

- o Stop for speeding, with no erratic/unusual operation.

Point out the decision on the slide.



Ask students to suggest circumstances under which it would be appropriate not to instruct the suspect to exit.



Ask students to suggest circumstances under which it would be appropriate to instruct the suspect to exit.

Remind students that they must always practice appropriate officer safety tactics while the suspect exits the vehicle.



15 Minutes

Display
Overhead
VI-2

3. Once the decision to instruct the suspect to exit has been made, the officer must closely observe the suspect's actions during the exit and walk from the vehicle, and note any additional evidence of impairment.

B. Typical Investigation Clues of the Driver Interview

1. The interview and face-to-face observation of the driver allow the officer to use three senses to gather evidence of alcohol and/or other drug influence.

a. Sense of sight

b. Sense of hearing

Point out block No. 2 on the slide.

Write "see -- hear -- smell" on chalkboard.



Ask students to suggest typical things that an officer might see during the interview that would be describable clues or evidence of alcohol and/or other drug influence.

After most major sight clues have been suggested, display them via slide VI-2.



Ask students to suggest typical things that an officer might hear during the interview that would be describable clues or evidence of alcohol and/or other drug influence.

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
VI-3**

c. Sense of smell

After most major sound clues have been suggested, display them via slide VI-3.



Ask students to suggest typical things that an officer might smell during the interview that would be describable clues or evidence of alcohol or drug ingestion. NOTE: For officer safety be aware of communicable airborne diseases, etc.



**Display
Overhead
VI-4**

2. Proper face-to-face observation and interview of the suspect demands two distinct but related abilities of the officer:

After most major odor clues have been suggested, display them via slide VI-4.

- a. Recognize the sensory evidence of alcohol and/or other drug influence.
- b. Describe that evidence clearly and convincingly.



**Display
Overhead
VI-5**

C. Recognition and Description of Investigation Clues



15 Minutes

- 1. Procedures for practicing clue recognition and description.
 - a. The next video segment deals strictly with the face-to-face observation and interview of a driver.

Aides

Lesson Plan

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- b. You will have to base your description of the driver's possible impairment strictly on what you see and hear during the face-to-face contact.
- c. Both senses provide some critically important evidence, not only in this video segment, but in all face-to-face contacts.
- d. When the video segment ends, a few minutes will be given to allow students to gather thoughts and compile notes on what was seen and heard.
- e. One or more students will be called upon to "testify" concerning what was seen and heard.
- f. Class will constructively critique the "testimony".

2. Video Segment No. 6
("The Busy Businessman")

3. Testimony on Video Segment No. 6.

- a. Key points to be elicited concerning what was seen:
 - o Weather/traffic conditions.
 - o Officer raps on driver's window to signal driver to open window.

Point out that this next video segment is a continuation of the last segment shown.

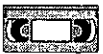
Standard note-taking guide to be used to compile notes.

Make sure all students understand the procedures.

Show video segment #6.

Allow three-four minutes for the students to compile notes.

Select two students to come forward together to testify.



Aides

Lesson Plan

Instructor Notes

- o Suspect lowers rear window first, then opens front window part way.
- o Suspect's appearance is dazed, stuporous.
- b. Key points to be elicited concerning what was heard:
 - o Speech is thick, slurred.
 - o Suspect asks "if this is going to take long."
 - o Suspect indicated he gave driver's license to officer.
 - o Suspect states "what stop sign" rather than red light.

Instruct students to testify strictly to what was seen.

Solicit class comments concerning details or possible improvements to the first student's testimony.

Instruct the second student to testify strictly to what was heard.

Solicit class comments concerning details or possible improvements to the second student's testimony.

Play back tape recording (as appropriate) to compare with second student's testimony.

D. Interview/Questioning Techniques

1. The questions an officer asks of a suspect, and the way in which they are asked, can provide simple, divided attention tasks.
2. Sample Divided Attention Question: ask suspect to produce their driver's license and vehicle registration.
3. Things to watch for in the suspect's response to your instruction to produce driver's license and vehicle registration:



Ask representative students to suggest possible evidence of impairment that might come to light during the production of the license and registration.



5 Minutes



Display Overhead VI-6

Aides

Lesson Plan

Instructor Notes

- a. Forgets to produce both documents (divided attention).
 - b. Produces inappropriate, or other documents.
 - c. Passes over the license and/or registration while searching through the wallet.
 - d. Fumbles or drops wallet, license or registration.
 - e. Unable to retrieve documents, using fingertips.
4. Variation on the request for license and registration: the interrupting or distracting question.
5. The interrupting or distracting question forces the suspect to divide attention between the license/registration search and the new question.
6. Things to watch for in suspect's response to the interrupting or distracting question:
- a. Suspect ignores question, because suspect is concentrating on the license/registration search.
 - b. Suspect forgets to resume search for license and registration after answering the question.
 - c. Suspect supplies incorrect answer to the question.

Example: "Without looking at your watch, what time it is right now?"



Ask class to suggest possible evidence of impairment that might be disclosed by the interrupting or distracting question. Continue to probe until all major possibilities have been mentioned.



Ask class to suggest other interrupting/distracting questions that might be put to a suspect during the retrieval of the driver's license.

Aides

Lesson Plan

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7. After obtaining the license and registration: verifying information through unusual questions.

Examples: While holding the suspect's driver's license, ask: "What is your middle name?"



Ask class to suggest other unusual questions that might serve as simple, pre-exit

techniques.

8. There are probably dozens of questions which the suspect should be able to answer very easily, but which might be very difficult to handle while impaired, simply because they are unusual.

9. Unusual questions require the suspect to process information; this can be especially difficult to do when the suspect doesn't expect to have to process information.

Examples: suspect may respond to the question about the middle name by giving first name.

In each case, suspect ignores the unusual question and instead answers an unspoken usual question.



Ask class to suggest other unusual questions that might be put to the suspect.

10. Sample tests that can be administered while the suspect is still inside the vehicle.

Point out that these kinds of tests have not been scientifically validated but still can be useful for obtaining evidence of impairment.

Demonstrate the examples listed below.

a. Alphabet recital.

Recite the alphabet, beginning with the letter E as in Edward, and stopping after the letter P as in Paul.

b. Count-down tests.

Aides

Lesson Plan

Instructor Notes



15 Minutes

c. Finger Count Test.

Count out loud backwards, starting with the number 67 and ending at the number 54.

Touch the tip of right thumb, in turn, to tips of the fingers of the right hand, simultaneously counting "one, two, three, four"; then reverse direction on fingers, simultaneously counting down "four, three, two, one".

NOTE: Be aware of any court restraints regarding these type of tests.

E. Recognition and Description of Clues Associated With the Exit Sequence

1. The decision to instruct the suspect to exit the vehicle may be based on suspicion that the suspect may be impaired.
 - a. Even though that suspicion may be strong, the suspect usually is not yet under arrest at this point.
 - b. How the suspect exits the vehicle, and the actions and behavior of the suspect during the exit sequence, may provide important additional evidence of alcohol and/or other drug influence.
2. Usual kinds of evidence obtained during observation of the exit sequence.

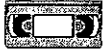


Ask students to suggest typical things that might be seen with an impaired suspect during the exit sequence.

Aides

Lesson Plan

Instructor Notes



- 3. Video Segment No. 7 ("The Busy Businessman Exiting")
- 4. Testimony on Video Segment No. 7
 - a. Key points prior to the exit:
 - o Admits drinking ("A couple").
 - o Officer detects odor of alcoholic beverage.
 - b. Key points during the exit:
 - o Suspect forgets to unfasten seat belt.
 - o Puts hand on door and roof to lift himself out of the car.
 - o Falls back against side of car upon exiting.
 - c. Key points after the exit:
 - o Stops to straighten clothes.
 - o Keeps hand on car while walking.

Show Video Segment #7.

Select a student to testify.

Solicit class comments concerning testimony.

After most major exit clues have been suggested, display them via slide VI-7.



**Display
Overhead
VI-7**

55 Minutes

SESSION VII
PHASE THREE: PRE-ARREST SCREENING

SESSION VII

PHASE THREE: PRE-ARREST SCREENING

Upon successfully completing this session, the students will be able to:

- o Describe the role of psychophysical and preliminary breath tests.
- o Define and describe the concepts of divided attention and nystagmus.
- o Discuss the advantages and limitations of preliminary breath testing.
- o Discuss the arrest decision process.

CONTENT SEGMENTS

- A. Overview: Tasks and Decision
- B. Gaze Nystagmus - Definition
- C. Horizontal Gaze Nystagmus - Definition, Concepts, Demonstrations
- D. Vertical Gaze Nystagmus - Definition, Concepts, Demonstrations
- E. Divided Attention Tests: Concepts, Examples, Demonstrations
- F. Advantages and Limitations of Preliminary Breath Testing
- G. The Arrest Decision

LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Instructor-Led Demonstrations
- o Video Presentation

Display Slide VII-O (Session Objectives)



55 Minutes



5 Minutes



Display
Overhead
VII-1



Display
Overhead
VII-2



**VII PHASE THREE:
PRE-ARREST SCREENING**

**A. Overview: Tasks and
Decision**

1. DWI Detection Phase Three, Pre-arrest Screening, consists of structured, formal psychophysical testing and preliminary breath testing of persons suspected of DWI, and culminates in the arrest/no arrest decision.

- a. Psychophysical tests are methods of assessing a suspect's mental and/or physical impairment.

- (1) The most significant psychophysical tests are the standardized field sobriety tests, administered at roadside.

Point out that it is the policy of some police departments to conduct psychophysical testing prior to preliminary breath testing, whereas other departments usually conduct preliminary breath testing first. Hence, the two screening tasks are shown as parallel rather than sequential activities on the slide.

Indicate the preferred sequence of psychophysical and preliminary breath testing for the students' department.

Point out that these tests directly assess impairment by focusing precisely on the human capabilities needed for safe driving (examples: balance, reactions, coordination, information, processing, etc.)

Write on chalkboard or flipchart: "Standardized Field Sobriety Tests."



Redisplay
Overhead
VII-1

- b. The preliminary breath test can also be very important in helping to corroborate all other evidence, and in helping to confirm the officer's judgment as to whether the suspect is under the influence.
- c. The final stage of Detection Phase Three is the Arrest Decision.

Point out the PBT block.
Instructor Please Note: In most states, results of a preliminary breath test ordinarily cannot be introduced as evidence by the prosecution. Indicate to students the limits of admissibility of PBT results in their state.

Point out the arrest decision on the slide.

Emphasize that the arrest decision is based on all of the evidence obtained during all three detection phases.



5 Minutes



Display
Overhead
VII-3

B. Nystagmus - Definition

- 1. "Nystagmus" means an involuntary jerking of the eyes.
 - a. Alcohol and certain other drugs cause Horizontal Gaze Nystagmus.
 - b. Show video.

Show video "The Truth Is In The Eyes" (Wisconsin - 1999).



5 Minutes

C. Horizontal Gaze Nystagmus - Definition, Concepts, Demonstration

- 1. Horizontal Gaze Nystagmus means an involuntary jerking of the eyes occurring as the eyes gaze toward the side.

Choose a student to come forward to serve as a demonstration subject.

2. To test for Horizontal Gaze Nystagmus, the suspect is instructed to stand with feet together, hands at sides, hold the head still, and follow the motion of a small stimulus with the eyes only.

a. The object may be the tip of a pen or penlight, the eraser on a pencil, or your fingertip which contrasts with the background.

b. Each eye is checked, beginning with the suspect's left.

c. Two or more "passes" are made before each eye, to look for each of the clues of nystagmus.

Ask student if they have any eye problems or eye abnormalities. If the student is wearing glasses, have student remove them.

Point out here the stimulus should be held approximately 12-15 inches (30-38 cm) from the suspect's nose.

Demonstrate the administration of the Horizontal Gaze Nystagmus test using a student.

Allow student to return to seat.

Point out that a suspect's height might restrict ability to clearly see nystagmus. Suspect may be placed in sitting position to accommodate a better view.

Suggest the showing of the video entitled, "The Truth Is In the Eyes" (8 minutes and 50 seconds).

Note: Vertical Gaze Nystagmus was not included in the SFST battery during the original research, however, it is a reliable indicator of a high quantity of alcohol for that individual, or other drug impairment.

D. Vertical Gaze Nystagmus - Definition, Concepts, Demonstration

1. Vertical Gaze Nystagmus is an involuntary jerking of the eyes occurring as the eyes are held at maximum elevation.



5 Minutes



20 Minutes



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VII-4

**E. Divided Attention Tests:
Concepts, Examples**

1. Many of the most reliable and useful psychophysical tests employ the concept of divided attention.
 - a. Driving is a complex divided attention task; composed of many components.
 - b. Alcohol and many other drugs impair a person's ability to divide attention.
 - c. Under the influence of alcohol or various other drugs, drivers often must ignore the less critical components of driving and focus their impaired attention on the more critical tasks.
2. Even under the influence, many people often can handle a single, focused-attention task fairly well.
3. But most people, when under the influence, cannot satisfactorily divide their attention to handle multiple tasks at once.

For VGN to be recorded, it must be distinct and sustained for a minimum of four seconds at maximum elevation.

Demonstrate the administration of the Vertical Gaze Nystagmus test using a student.

Remind students of the many tasks drivers must perform in order to operate a vehicle safely.

Example: Focus on steering and speed control, and ignore signaling or the processing of information from traffic control devices.

Example: May be able to keep the vehicle well within the proper traffic lane, as long as the road remains fairly straight.

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
VII-5**



**Display
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VII-6**

4. Application of divided attention concept to psychophysical testing: select and use field sobriety tests that simulate the divided attention characteristics of driving.

a. Typical mental and physical capabilities that drivers must be able to carry out simultaneously.

- o Information processing
- o Short-term memory
- o Judgement/decision making
- o Vision
- o Small muscle control

b. A test that simultaneously requires a person to demonstrate two or more of these capabilities is a potentially good psychophysical test.

5. Key supportive concept for divided attention tests: simplicity.

a. It is not enough to select a test that divides the suspect's attention.

b. The test must also be reasonably simple to perform, when sober.

Point out that some of the best psychophysical tests are those that exercise the same mental and physical capabilities that a person needs to drive safely.

Briefly give examples/indications of how these capabilities relate to driving.

- c. Tests that might be too difficult to perform when sober will be of little or no evidentiary value.
6. First example of a simple divided attention test: Walk-and-Turn.

Point out that Walk-and-Turn is a test that has been validated through extensive research sponsored by the National Highway Traffic Safety Administration.

NOTE: Also point out here, that officers should be reminded of the rigid standards the scientific community must follow in order to validate laboratory research (i.e., the development of psychophysical test for DWI detection) and the differences between validated testing and standardized testing. Officers administering SFSTs at roadside are expected: 1) to be reasonable and prudent in their decision to test; and 2) not to deviate from the SFST administrative instructions described later in this course.



Display
Overhead
VII-7

- a. Walk-and-Turn is a divided attention test consisting of two stages:
 - o Instructions stage.
 - o Walking stage.
- b. Instructions Stage: Suspect must assume heel-to-toe stance, with arms at sides, and listen to instructions.

Remind students that prior to starting this test they should ask if the subject has any physical problems or disabilities.

Demonstrate stance.

- c. Walking Stage: Suspect must take nine heel-toe steps down the line, turn in a prescribed fashion, and take nine heel-toe steps up the line, while counting steps out loud.
- d. Prescribed Turn: Suspect must keep the front foot on the line, turn on that foot, using a series of small steps with the other foot.
7. Second example of a simple divided attention test: One-Leg Stand.
- a. One-Leg Stand consists of two stages.
- o Instructions stage.
 - o Balance and Counting stage.
- b. Instructions Stage: Suspect must stand with the feet together, with arms at sides, and listen to the instructions.
- c. Balance and Counting Stage: Suspect must raise one leg, either leg, with the foot approximately six inches (15 cm) off the ground, keeping raised foot parallel to the ground.

Point out that this divides attention between a balancing task and an information processing task. Demonstrate heel-toe steps and simultaneous counting.

Demonstrate turn.

Point out that the walking stage divides the suspect's attention between a task of listening, comprehending and carrying out the instruction.

Point out that One-Leg Stand has also been validated through NHTSA's research program.

Point out that this divides attention between a balancing task and an information processing task. Demonstrate the stance.

Demonstrate stance and counting.

Point out that this divides attention between balancing and counting out loud.



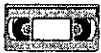
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VII-8

While looking at the raised foot, count out loud in the following manner: "one thousand and one," "one thousand and two," "one thousand and three" until told to stop.

Point out that research has demonstrated that many impaired suspects are able to maintain one leg balance for as long as 25 seconds, but relatively few can do so for 30 seconds. NOTE: Therefore officer should keep track of the actual time the suspect stands on one leg. When 30 seconds have passed, stop the test.

Point out that the subject should be timed while performing this test.

- 8. Video Segment Number 8



Show video segment #8, tape one "Proper Administration of the SFSTs"

- 9. Other examples of simple, divided attention tests. (Instructor's Option)

Instructor Please Note:
If time permits, explain and demonstrate other divided attention tests that may be used by student's respective departments.

Typical tests:

- o Finger-to-nose
- o Romberg balance

F. Advantages and Limitations of Preliminary Breath Testing

- 1. Basic purpose of preliminary breath testing: To demonstrate the association of alcohol influence with the sensory evidence of the suspect's impairment.

NOTE: If your state does not have a PBT law, skip this segment. However, passive alcohol sensors are available to detect the possible presence of alcohol.



15 Minutes



Display Overhead VII-9

Aides

Lesson Plan

Instructor Notes

- 2. Preliminary breath testing, like psychophysical testing, is a stage of the pre-arrest screening of a DWI suspect.
 - a. Suspect is not yet under arrest when requested to submit to the preliminary breath test.
 - b. Incident remains at the investigative stage; accusatory stage has not yet begun.
 - c. PBT result is only one additional factor to help determine whether or not suspect should be arrested for DWI.
 - d. PBT result can be a significant factor in the arrest decision, because it provides a direct indication of alcohol influence.

- 3. Advantages of Preliminary Breath Testing.
 - a. Corroborates other evidence: demonstrates that the suspicion of alcohol influence is consistent with the officer's observations of suspect's mental and physical impairment.

Emphasize that the suspect's impairment is established through what the officer sees, hears and smells.

Emphasize that the PBT helps to confirm the chemical basis (alcohol) of that impairment.

i.e., all other evidence, from initial observation of vehicle in operation through psychophysical testing, indicates alcohol influence indirectly, based on impairment of the suspect's mental and physical faculties.



Display
Overhead
VII-10

Aides

Lesson Plan

Instructor Notes

b. Confirms officer's own judgment: helps the officer gain confidence in ability to evaluate alcohol impairment accurately, based on observations and psychophysical tests.

c. May disclose the possibility of medical complications and/or impairment due to drugs other than alcohol.

d. Can help to establish probable cause for a DWI arrest.

4. Limitations of Preliminary Breath Testing.

a. Evidentiary Limitations.

Point out that many experienced DWI officers find that they rely less and less on the PBT as their confidence in their own powers of detection increases.

i.e., observed psychophysical impairment coupled with a PBT result showing very low BAC indicates an immediate need to investigate the possibility that the suspect suffers from some medical/ health problem, or may have ingested other drugs.

INSTRUCTOR PLEASE

NOTE: The potential role of the PBT in establishing probable cause may be affected by the evidentiary value of PBT results in your state.

Consult your specific PBT statute, and your local state's or district attorney to clarify this point for your students.

Explain the specific circumstances under which PBT results may and may not be admissible as evidence in your state.



Display
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VII-11

- b. Accuracy Limitations:
- o Circumstances producing low test results.
 - o Circumstances producing high test results.

5. Factors affecting accuracy of Preliminary Breath Tests.

- a. Five major factors potentially can affect preliminary breath test accuracy:
- o Composition of breath sample.
 - o Cooling of breath sample.
 - o Residual mouth alcohol.
 - o Contaminating substances in the breath sample.
 - o Radio frequency interference (RFI)

Explain the weight or probative value of PBT evidence, when admissible.

Point out that, although all PBT instruments currently used by law enforcement are reasonably accurate, they are subject to the possibility of some error, especially if they are not used in the proper fashion.

Point out that the first two factors listed act to produce low test results, and that the third and fourth act to produce high test results.

Point out that RFI can produce either high or low test results, or can prevent a breath test device from producing any result.

Briefly explain the factors and their influence.



5 Minutes

Display
Overhead
VII-12**G. The Arrest Decision**

1. Arrest/No Arrest Decision is based on all evidence accumulated during all detection phases.
 - a. Officer's mental summary of the evidence collected during vehicle in motion, personal contact, and pre-arrest screening.
 - b. The decision involves a careful review and "weighing" of observations.
2. If all of the evidence, taken together, establishes probable cause to believe the offense has been committed, officer should arrest the suspect.
3. In the absence of probable cause, the proper decision is to release suspect, or to cite for another violation, if applicable.

Three Hours and Twenty Minutes

SESSION VIII

CONCEPTS AND PRINCIPLES OF THE
STANDARDIZED FIELD SOBRIETY TESTS (SFST)

SESSION VIII

CONCEPTS AND PRINCIPLES OF THE STANDARDIZED FIELD SOBRIETY TESTS (SFST)

Upon successfully completing this session, the student will be able to:

- o Discuss the development and validity of the research and the standardized elements, clues and interpretation of the three standardized field sobriety tests.
- o Discuss the different types of nystagmus and their effects on the Horizontal Gaze Nystagmus test.
- o Discuss and properly administer the three standardized field sobriety tests.
- o Discuss and recognize the clues of the three standardized field sobriety tests.
- o Describe in a clear and convincing manner and properly record the results of the three standardized field sobriety tests on a standard note taking guide.
- o Discuss the limiting factors of the three standardized field sobriety tests.

CONTENTS SEGMENTS

LEARNING ACTIVITIES

- | | |
|---|--|
| A. Overview: Development and Validation | o Instructor-Led Presentation |
| B. SFST Field Validation Studies | o Instructor-Led Demonstration |
| C. Horizontal Gaze Nystagmus | o Student Practice Session and Demonstration |
| D. Vertical Gaze Nystagmus | |
| E. Walk-and-Turn | |
| F. Combining the Clues of the Horizontal Gaze Nystagmus and Walk-and-Turn | |
| G. One-Leg Stand | |
| H. Limitations of the Three Tests | |
| I. Taking Field Notes on the Standardized Field Sobriety Tests | |



Display Slide VIII-O (Session Objectives)



3 Hours
20 Minutes



15 Minutes



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VIII-1



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VIII-1A

VIII CONCEPTS AND PRINCIPLES OF THE STANDARDIZED FIELD SOBRIETY TESTS (SFST)

A. Overview: Development and Validation

1. For many years law enforcement officers have utilized field sobriety tests to determine the impairment of a person's driving due to alcohol influence. The performance of the person on those field sobriety tests was used by the officer to develop probable cause for arrest and as evidence in court. A wide variety of field sobriety tests existed and there was a need to develop a battery of standardized valid tests.

2. Beginning in late 1975, extensive scientific research studies were sponsored by NHTSA through a contract with the Southern California Research Institute (SCRI) to determine which roadside field sobriety tests were the most accurate.

Point out to students that NHTSA contracted with the Southern California Research Institute (SCRI) in 1975 to develop these field tests. SCRI published the following three reports:

California: 1977 (Lab)
California: 1981 (Lab and Field)
Maryland, D.C., V.A., N.C., 1983 (Field)

See Attachment A, page 3, #20.



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VIII-2

3. SCRI traveled to law enforcement agencies throughout the United States to select the most commonly used field sobriety tests. Six tests were used in the initial stages of this study.

4. Laboratory research indicated that three of these tests, when administered in a standardized manner, were a highly reliable battery of tests for distinguishing BACs above 0.10:

- o Horizontal Gaze Nystagmus (HGN)
- o Walk-and-Turn (WAT)
- o One-Leg Stand (OLS)

5. NHTSA analyzed the laboratory test data and found:

- o HGN, by itself, was 77% accurate.
- o WAT, by itself, was 68% accurate.
- o OLS, by itself, was 65% accurate.
- o By combining the results of HGN and WAT, an 80% accuracy rate can be achieved.

6. The final phase of this study was conducted as a field validation.



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VIII-3



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VIII-4

Aides

Lesson Plan

Instructor Notes



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VIII-4A**



**Display
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VIII-4B**



15 Minutes



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VIII-5**



**Display
Overhead
VIII-6**

- o Standardized, practical and effective procedures were developed.

- o The tests were determined to discriminate in the field, as well as in the laboratory.

7. The three standardized tests were found to be highly reliable in identifying subjects whose BACs were above 0.10. The results of the study validated the SFSTs.

B. SFST Field Validation Studies

1. Three SFST validation studies were undertaken between 1995 and 1998:

- o Colorado - 1995
- o Florida - 1997
- o San Diego - 1998

2. The Colorado SFST validation study was the first full field study that utilized law enforcement personnel experienced in the use of SFSTs.

- o The original SCRI study utilized only a few experienced officers in DWI enforcement in both a laboratory setting and field setting.

See Attachments B, C, and D.



Display
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VIII-7

- o Based on the 3-test battery (HGN, WAT, OLS), correct arrest decisions were made 93% of the time. Substantially higher than the initial study results.
3. The Florida SFST field validation study was undertaken in order to answer the question of whether SFSTs are valid and reliable indices of the presence of alcohol at 0.08 levels and above when used under present day traffic and law enforcement conditions.
- o Based on the 3-test battery (HGN, WAT, OLS), correct decisions to arrest were made 95% of the time.
 - o This study has shown that the SFST 3-test battery is the only scientifically validated and reliable method for discriminating between impaired and unimpaired drivers.

4. The San Diego SFST field validation study was undertaken because of the nationwide trend towards lowering the BAC limits to 0.08. The question to be answered was "does SFST discriminate at BAC's below 0.10".

- o Based on the 3-test battery (HGN, WAT, OLS), arrest decisions were supported 91% of the time at the 0.08 BAC level and above.



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VIII-8

- o HGN is still the most reliable of the 3-test battery.

This study provided the first indications supporting arrest decisions at 0.08 BAC. The study also suggests that HGN can provide valid indications of 0.04 BAC and above.

Note: Refer to Attachments C and D for information regarding these SFST research studies.

C. Horizontal Gaze Nystagmus

1. Review of definition.
 - a. Involuntary jerking of the eyes, occurring as the eyes gaze to the side.
 - b. In addition to being involuntary:
 - o person is generally unaware that it is happening.
 - o person is powerless to stop it or control it.
2. Key Summary Point.
 - a. Alcohol and certain other drugs cause Horizontal Gaze Nystagmus.
3. Categories of Nystagmus.
 - a. Horizontal Gaze Nystagmus is not the only kind of nystagmus.
 - b. There are other circumstances under which the eyes will jerk involuntary.



**1 Hour 15
Minutes**



**Display
Overhead
VIII-9**



**Display
Overhead
VIII-10**

c. It is important to know some of the other common types of nystagmus, to be aware of their potential impact on our field sobriety tests.

d. Nystagmus of several different origins may be seen. There are three general categories of nystagmus:

(1) Vestibular Nystagmus is caused by movement or action to the vestibular system.

(a) Types of vestibular nystagmus:

o Rotational Nystagmus occurs when the person is spun around or rotated rapidly, causing the fluid in the inner ear to be disturbed.

o Post Rotational When the person stops spinning, the fluid in the inner ear remains disturbed for a short period of time, and the eyes continue to jerk.

Reveal the first category on Slide VIII-10.

Point out that the vestibular system is a sense organ located in the inner ear. It provides information to the brain, and consequently to the eyes about position and movement of the head to maintain orientation and balance of the body.

If you were able to observe the eyes of a rotating person, they would be seen to jerk noticeably.

Also indicate that these types of nystagmus will not interfere with the horizontal gaze nystagmus test due to the conditions under which they occur.

To illustrate rotational and post rotational, swirl a half glass of water several times. Stop swirling glass, water will continue to spin for a short period of time.

Aides

Lesson Plan

Instructor Notes

- o Caloric Nystagmus occurs when fluid motion in the canals of the vestibular system is stimulated by temperature as by putting warm water in one ear and cold in the other.

- o Positional Alcohol Nystagmus (PAN) occurs when a foreign fluid, such as alcohol, that alters the specific gravity of the blood is in unequal concentrations in the blood and the vestibular system.

In the original HGN study, research was not conducted for performing HGN on people lying down. Current research demonstrates that HGN can be performed on someone in this position.

See Attachment A, page 5, #33, *Nystagmus Testing in Intoxicated Individuals*.

This causes the vestibular system to respond to gravity in certain positions, resulting in nystagmus.

There are two types of PAN:

PAN I-occurs when the alcohol concentration in the blood is greater than the inner ear fluid. PAN I occurs while BAC is increasing.

Aides

Lesson Plan

Instructor Notes

(2) Nystagmus can also result directly from neural activity:

(a) Optokinetic

Nystagmus occurs when the eyes fixate on an object that suddenly moves out of sight, or when the eyes watch sharply contrasting moving images.

- o Examples of optokinetic nystagmus include watching strobe lights, rotating lights, or rapidly moving traffic in close proximity.
- o The Horizontal Gaze Nystagmus test will not be influenced by optokinetic nystagmus if administered properly.

PAN II - occurs when the alcohol concentration in the inner ear fluid is greater than in the blood. An example of PAN is the spinning of a room when a person lies down after consuming alcohol. This occurs while BAC is decreasing.

Reveal the next category on Slide VIII-10.

Point out that during the Horizontal Gaze Nystagmus test, the suspect is required to focus the eyes on a penlight, pencil or similar object that moves smoothly and relatively slowly across the field of view, thus optokinetic nystagmus will not occur.

Aides

Lesson Plan

Instructor Notes

(b) Physiological
Nystagmus is a natural nystagmus that keeps the sensory cells of the eye from tiring. It is the most common type of nystagmus.

- o It happens to all of us, all the time. This type of nystagmus produces extremely minor tremors or jerks of the eyes.
- o These tremors are generally too small to be seen with the naked eye.

(c) Gaze Nystagmus occurs as the eyes move from the center position. Gaze nystagmus is separated into three types:

(d) Horizontal Gaze
Nystagmus occurs as the eyes move to the side. It is the observation of the eyes for Horizontal Gaze Nystagmus that provides the first and most valid test in the standardized field sobriety testing battery.

Emphasize that physiological nystagmus will have no impact on our standardized field sobriety tests, because its tremors are generally invisible.

Emphasize to students that this training course is concerned with Horizontal Gaze Nystagmus and that this procedure has been validated as an accurate indicator for alcohol influence by extensive scientific research.

Alcohol is a central nervous system depressant.

Aides

Lesson Plan

Instructor Notes

Although this type of nystagmus is most accurate for determining alcohol influence, its presence may also indicate use of certain other drugs.

(e) Vertical Gaze
Nystagmus is an involuntary jerking of the eyes occurring as the eyes are held at maximum elevation.

- o The presence of this type of nystagmus is associated with high doses of alcohol for that individual and certain other drugs.
- o The drugs that cause Vertical Nystagmus are the same ones that cause Horizontal Gaze Nystagmus.
- o There is no drug that will cause VGN that does not cause HGN. If VGN is present and HGN is not, it could be a medical condition.

Examples of other drugs are: Depressants, Inhalants, PCP and its analogs.

NOTE: All drugs that cause HGN may also cause VGN, if enough of the drug is taken.

For VGN to be recorded, it must be definite, distinct and sustained for a minimum of four seconds at maximum elevation.

(3) Nystagmus may also be caused by certain pathological disorders. They include brain tumors and other brain damage or some diseases of the inner ear. These pathological disorders occur in very few people and in even fewer drivers.

4. Medical Impairment.

- a. The observations that you can make to assess possible medical impairment include:
- o Pupil size
 - o Resting Nystagmus
 - o Tracking ability
- b. Pupil Size will be affected by some medical conditions or injuries:
- o If the two pupils are distinctly different in size, it is possible that the subject has a glass eye, or is suffering from a head injury or a neurological disorder.
- c. Resting Nystagmus is referred to as jerking as the eyes look straight ahead. This condition is not frequently seen. Its presence usually indicates a pathology or high doses of a drug such as PCP.

Reveal the next category on Slide VIII-10.

Point out that nystagmus caused by pathological disorders is extremely rare in the driving population. Persons suffering from these disorders are rarely able to drive.

NOTE: Resting Nystagmus may also be a medical problem.

Although this observation is an important medical assessment, it is NOT an HGN administrative procedure step.

- d. Tracking Ability will be affected by certain medical conditions or injuries involving the brain:
- o If the two eyes do not track together, the possibility of a serious medical condition or injury is present.
 - o By passing a stimulus across both eyes, you can check to see if both eyes are tracking equally.
 - o If they don't (i.e., if one eye tracks the stimulus, but the other fails to move, or lags behind the stimulus) there is the possibility of a neurological disorder.
 - o If a person has sight in both eyes, but the eyes fail to track together, there is a possibility that the person is suffering from an injury or illness affecting the brain.

Demonstrate how to check for tracking ability.

Point out: Even though the possibility of alcohol and/or drug impairment exists, officers should be aware of medical conditions having symptoms in common with alcohol influence.

See Attachment A, page 5, #33, *Nystagmus Testing in Intoxicated Individuals*.

See Attachment A, page 5, #34, *Robustness of the Horizontal Gaze Nystagmus Test*.

Note: For further information on drugs other than alcohol and procedures for conducting a preliminary examination to check for medical impairment, injury or drug impairment, see the curriculum package entitled "Drugs That Impair Driving", or "Introduction to Drugged Driving" available from the NHTSA.



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VIII-11

5. Administrative Procedures for Horizontal Gaze Nystagmus.

It is important to administer the Horizontal Gaze Nystagmus test systematically using the following steps, to ensure that nothing is overlooked.

- a. Step I: Check for Eyeglasses. Begin by instructing the suspect to remove eyeglasses, if worn.
 - o It does not matter whether the suspect can see the stimulus with perfect clarity, as long as suspect can see it at all.
- b. Step II: Verbal Instructions. Give the suspect the appropriate verbal instructions:
 - o Put feet together, hands at the side.
 - o Keep head still
 - o Look at the stimulus
 - o Follow movement of the stimulus with the eyes only
 - o Keep looking at the stimulus until told the test is over

Prior to administering HGN, check to see if the subject has any eye problems or eye abnormalities.

There are 10 steps in the systematic administration of the Horizontal Gaze Nystagmus test.

Point out that eyeglasses may impede the suspect's peripheral vision, and may also impede the officer's ability to observe the eye carefully.

Remind students that nystagmus is not a vision test.

Point out that officers should note whether suspect sways, wobbles, etc. while trying to balance.

Emphasize that these are the major points that must be conveyed during the verbal instructions.

Aides

Lesson Plan

Instructor Notes

- c. Step III: Positioning the Stimulus. Position the stimulus approximately 12-15 inches (30-38 cm) in front of suspect's nose, and slightly above eye level to commence the test.

- d. Step IV: Equal Pupil Size and Resting Nystagmus. Check for equal pupil size and resting nystagmus.

- e. Step V: Tracking. Check for equal tracking.

- f. Step VI: Lack of Smooth Pursuit. Check the left eye for lack of the "Smooth Pursuit" clue. If the eye is observed to jerk while moving, that is one clue.
 - o Check the right eye for lack of the "Smooth Pursuit" clue and compare.

- g. Step VII: Distinct and Sustained Nystagmus at Maximum Deviation. Check the left eye for the "distinct and sustained nystagmus at maximum deviation" clue. If the jerkiness is distinct and sustained, that is one clue.

Resting Nystagmus may be observed at this time. Officers should note whether the suspect displays Resting Nystagmus.

Remind students to also check for resting nystagmus when checking for equal pupil size.

Move the stimulus rapidly from center to far right, to far left and back to center (approximately 2 seconds).

Remind students to make at least two complete passes in front of the eyes to check this clue.

Emphasize that the jerking must be definite, distinct and sustained in order to score this clue.

Remind students to check each eye at least twice for this clue.



Display
Overhead
VIII-12

6. Clues for Horizontal Gaze Nystagmus.
- a. When we administer the Horizontal Gaze Nystagmus test, we look for three specific clues as evidence of alcohol influence.
 - b. We check each eye independently for each clue.
 - c. For standardization, begin with the subject's left eye. Check for the first clue. Next, check right eye for same clue. Repeat this procedure for each clue starting with left eye, then right eye. Compare and document the results.

It is possible that all three clues definitely will be found in one eye, while only two (or sometimes only one) will show up in the other eye. It is always necessary to check both eyes, and to check them independently.

Notwithstanding, it is unlikely that the eyes of someone under the influence of alcohol will behave totally different.

Thus, if one eye shows all three clues distinctly while the other eye gives no evidence of nystagmus, the person may be suffering from one of the pathological disorders covered previously.

It is important that students start with the subject's left eye first. Then check the right eye for the same clue. This procedure should be used for all three clues.

Remind the students to check each eye twice for each clue.



Display
Overhead
VIII-13

- d. When we are checking an eye, it is good practice to administer the test by-the-numbers each time, to make sure that no step is overlooked.
- e. Clue No. 1: Lack of Smooth Pursuit.
 - o The first clue requires that the suspect move the eye to follow the motion of a smoothly moving stimulus.
 - o The stimulus may be the eraser on a pencil, the tip of a penlight, the tip of your finger, or any similar small object.
 - o Begin by holding the stimulus approximately 12-15 inches (30-38 cm) in front of the suspect's nose, and slightly higher than the level of the suspect's eye.
 - o Move the stimulus smoothly all the way out to the right (checking suspect's left eye first) then move the stimulus smoothly all the way across the suspect's face to the left side (checking the suspect's right eye), then back to center.
 - o Make at least two complete passes with the stimulus.

EMPHASIZE THAT: OFFICER SAFETY IS OF KEY IMPORTANCE WHEN ADMINISTERING THESE TESTS.

Emphasize that suspect must keep the head still and follow the stimulus with the eyes only.

Emphasize here that it is best to use a stimulus which contrasts with the background.

Point out that when stimulus slightly higher than eye level, suspect will have to open eyes wide to focus on it. Wide-open eyes make it easier to see the nystagmus.

Analogy: movement of a non-impaired person's eye will be similar to the movement of a marble rolling across a polished pane of glass (i.e., frictionless), or the movement of windshield wipers across a wet windshield versus a dry windshield.

Aides

Lesson Plan

Instructor Notes

- o If a person is not impaired, the eyes should move smoothly as the object is moved back and forth.
- o If the person is impaired by alcohol and/or some other drugs, the eye should jerk noticeably as it moves back and forth.

(1) The Mechanics of Clue Number 1.

- o It is necessary to move the object smoothly in order to check the eye's ability to pursue smoothly.
- o The stimulus should be moved from center position, all the way out to the right side (checking subject's left eye) where the eye can go no further, and then all the way back across subject's face all the way out to the left side where the eye can go no further

Analogy: movement of an impaired person's eyes will be similar to a marble rolling across a sheet of sandpaper (encountering resistance, friction), or the movement of windshield wipers across a wet windshield versus a dry windshield.

Note: This will also be seen with certain categories of drugs.

Demonstrate.

Aides

Lesson Plan

Instructor Notes

(checking subject's right eye) and then back to the center.

- o The object must be moved steadily, at a speed that takes **approximately 2** seconds to bring the eye from center to side.

- o A good practice is to hold the elbow stiff, but slightly bent, and to pivot the entire arm from the shoulder.

- o In checking for this clue, **make at least two complete passes** in front of the eyes.

- o If you are still not able to determine whether or not the eye is jerking as it moves, additional passes may be made in front of the eyes.

(2) Live Demonstration of the Mechanics of Clue No. 1.

Point out that the stimulus should be moved at a speed that requires approximately two seconds to bring it from the center out all the way to the right side. It should be returned toward the subject's nose at the same speed.

Demonstrate.

Demonstrate.

Solicit a student to participate in the live demonstration.

Station the student-subject in a position where the eyes can easily be seen by the class. (It may be necessary to conduct the demonstration at two or more locations in the class to permit all to see.)

Aides

Lesson Plan

Instructor Notes

	<ul style="list-style-type: none">o Position stimulus approximately 12-15 inches (30-38 cm) in front of nose, slightly higher than eye level.o Stimulus is moved smoothly from center all the way out to the right (checking subject's left eye), back across subject's face all the way to the left side (checking subject right eye) then back to center.o A second pass is conducted the same as the first.o On each pass, the arm is moved smoothly, and the eye is taken as far to the side as possible. <p>(3) Student practice of the mechanics of Clue No. 1.</p> <ul style="list-style-type: none">o Practice in groups of two or three, taking turns.	<p>Articulate each step in the procedural mechanics aloud.</p> <p>Point out how the arm is held to ensure smooth movement.</p> <p>Point out that each pass takes the eye as far to the side as it can go.</p> <p>Point out that it takes approximately 2 seconds to move the object from center to the side as far as the eye can go.</p> <p>Solicit students' questions concerning the procedural mechanics for Clue No. 1.</p> <p>Instruct each student to practice conducting the test of smooth pursuit, using another student as a subject.</p> <p>Remind students that they are to make at least two complete passes in front of the eyes.</p>
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Aides

Lesson Plan

Instructor Notes

- o Coaching and critiquing students' practice.

Common initial mistakes to note and correct:

- o Holding object too close to (or too far from) subject's eyes;

- o Moving object too slowly (or too quickly) toward the side;

- o Failing to move object far enough to the side to bring eye to maximum deviation.

- o Curving downward and curving around. Note: Encourage students to practice this procedure using a flat surface such as a wall for a guide.

- o Student-led demonstration.

Choose a student who appears to be doing a good job in carrying out the procedural mechanics of Clue No. 1, and have that student come forward with a subject to demonstrate the mechanics to the class.

Resume student practice and allow it to continue until all students appear reasonably proficient in carrying out the mechanics of Clue No. 1.

- f. Clue No. 2: Distinct and Sustained Nystagmus at Maximum Deviation.



Display Overhead VIII-14

Aides

Lesson Plan

Instructor Notes

- o Once you have completed the check for smooth pursuit, you will test the eyes for distinct and sustained nystagmus when the eye is held at maximum deviation, beginning with the subject's left eye.

(1) The Mechanics of Clue Number 2.

- o Once again, position the stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose.
- o Move the stimulus off to the right side (checking suspect's left eye) until the eye has gone as far as possible.
- o Hold the stimulus steady at that position for a minimum of four (4) seconds, and carefully watch the eye.
- o Then, move the stimulus back across the subject's face all the way out to the left side (subject's right eye).
- o Hold the stimulus steady and carefully watch the eye.

Demonstrate

Demonstrate holding the stimulus steadily off to the side.

Point out that four (4) seconds is a relatively long period of time. You cannot simply hold the eye to the side for an instant, and expect to observe distinct jerking.

Note: Four seconds will not cause fatigue nystagmus. This type of nystagmus may begin if a subject's eye is held at maximum deviation for more than 30 seconds.

Repeat this step.

Aides

Lesson Plan

Instructor Notes

- o If the person is impaired, the eye is likely to exhibit definite, distinct and sustained jerking when held at maximum deviation for a minimum of 4 seconds.
- o In order to "count" this clue as evidence of impairment, the nystagmus must be distinct and sustained for a minimum of 4 seconds.
- o If you think you see only slight nystagmus at this stage of the test, or if you have to convince yourself that nystagmus is present, then it isn't really there.

(2) Live Demonstration of the Mechanics of Clue No. 2.

- o Stimulus initially positioned approximately 12-15 inches (30-38 cm) in front of the student-subject's nose, slightly higher than eye level.
- o Stimulus moved to the side, drawing the eye to its maximum deviation.

Emphasize this point.

ONCE AGAIN, EMPHASIZE OFFICER SAFETY.

Aides

Lesson Plan

Instructor Notes

	<ul style="list-style-type: none">o Hold the stimulus steady at that point for a minimum of 4 seconds, to determine whether or not there is distinct and sustained nystagmus.o Then, move the stimulus back across the subject's face all the way out to the left side (subject's right eye).o Hold the stimulus steady and carefully watch the eye.o Hold the stimulus steady at that point for a minimum of 4 seconds to determine whether or not there is distinct and sustained nystagmus. <p>(3) Student practice of the mechanics of Clue No. 2.</p> <ul style="list-style-type: none">o Practice in groups of two or three, taking turns.o Coaching and critiquing students' practice.	<p>Solicit a student to participate in the live demonstration.</p> <p>Station the student-subject in a position where eyes can readily be seen by the class. (It may be necessary to conduct the demonstration at two or more locations in the class.)</p> <p>Articulate each step in the procedural mechanics aloud.</p> <p>Instruct each student to practice conducting the test of maximum deviation, using another student as a subject.</p> <p>Common initial mistakes to note and correct:</p> <ul style="list-style-type: none">o not bringing the eye sufficiently far to the side (some white still showing).
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Aides

Lesson Plan

Instructor Notes



Display Overhead VIII-15

- o Student-led Demonstrations

- g. Clue No. 3: Onset of Nystagmus Prior to 45 Degrees.
 - o Once again, position the stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose.
 - o The angle of onset of nystagmus is simply the point at which the eye is first seen jerking.
 - o Generally speaking, the higher the BAC, the sooner the jerking will start as the eye moves toward the side.
 - o If the jerking begins prior to 45-degrees, that person's BAC could be 0.08 or above.

- o not holding the object steadily for at least four seconds, at maximum deviation.

Allow student practice to continue until all students appear reasonably proficient in carrying out the mechanics of Clue No. 2.

Solicit students' questions concerning the procedural mechanics for Clue No. 2.

EMPHASIZE OFFICER SAFETY.

Examples: With someone at a very high BAC (0.20+), the jerking might begin almost immediately after the eye starts to move toward the side. For someone at 0.08 BAC, the jerking might not start until the eye has moved nearly to the 45 degree angle.

REMINDE STUDENTS THAT THE ADMINISTRATION OF HGN IS NOT TO BE USED TO ESTIMATE SPECIFIC BAC LEVEL.

Aides

Lesson Plan

Instructor Notes

- o It is not difficult to determine when the eye has reached the 45-degree point, but it does require some practice.
 - o If you start with the stimulus approximately 12-15 inches (30-38 cm) directly in front of the nose, you will reach 45-degrees when you have moved the stimulus an equal distance to the side.
 - o Two other important indicators can be used to determine if the eye is within 45 degrees:
 - at 45 degrees, some white usually will still be visible in the corner of the eye (for most people).
 - If you started with the stimulus approximately 12-15 inches (30-38 cm) in front of the suspect, when you reach 45 degrees the stimulus will usually be lined up with, or slightly beyond, the edge of the subject's shoulder.
- (1) The Mechanics of Clue No. 3.

Instruct students that whatever distance you position the stimulus from the nose, you will reach 45 degrees when you have moved the stimulus an equal distance to the side. (i.e., If you start with the stimulus 12 inches from the nose, move it 12 inches to the side.)

Point out the white showing in the eye portrayed in Slide VIII-15. Note that some people's eyes may exhibit no white in the corner prior to 45-degrees.

Point out alignment of stimulus and shoulder in Slide VIII-15.

Point out that this latter indicator may not be valid if the suspect is either a very large or a very small person.

Remind students to repeat this step.

Aides

Lesson Plan

Instructor Notes

- o The stimulus is positioned approximately 12-15 inches from (30-38 cm) subject's nose.
- o It is necessary to move the stimulus slowly to identify the point at which the eye begins to jerk.
- o Start moving the stimulus towards the right side (left eye) at the speed that would take approximately 4 seconds for the stimulus to reach the edge of the suspect's shoulder.
- o As you are slowly moving the stimulus, watch the eye carefully for any sign of jerking.
- o When you see the jerking begin, immediately stop moving the stimulus and hold it steady at that position.
- o With the stimulus held steady, look at the eye and verify that the jerking is continuing.

Demonstrate stopping the stimulus, and holding it steady.

Demonstrate movement at that speed.

Point out that nystagmus doesn't go away once the eye stops moving. If the officer actually has found the point of onset, the eye will continue to jerk when the stimulus is held steady.

Aides

Lesson Plan

Instructor Notes

- o If the jerking is not evident with the stimulus held steady, you have not located the point of onset. Therefore, resume moving the stimulus slowly toward the side until you notice the jerking again.

- o When you locate the point of onset of nystagmus, you must determine whether it is prior to 45 degrees.
 - Verify that some white is still showing in the corner of the eye.

 - Examine the alignment between the stimulus and the edge of the suspect's shoulder.

- o Start moving the stimulus towards the left side (right eye) at the speed that would take approximately 4 seconds for the stimulus to reach the edge of the suspect's shoulder.

Demonstrate stopping the stimulus, and holding it steady.

Aides

Lesson Plan

Instructor Notes

- o As you are slowly moving the stimulus, watch the eye carefully for any sign of jerking.
- o When you see the jerking begin, immediately stop moving the stimulus and hold it steady at that position.
- o With the stimulus held steady, look at the eye and verify that the jerking is continuing.
- o If the jerking is not evident with the stimulus held steady, you have not located the point of onset. Therefore, resume moving the stimulus slowly toward the side until you notice the jerking again.
- o When you locate the point of onset of nystagmus, you must determine whether it is prior to 45 degrees.
 - Verify that some white is still showing in the corner of the eye.

Demonstrate movement at that speed.

Point out that nystagmus doesn't go away once the eye stops moving. If the officer actually has found the point of onset, the eye will continue to jerk when the stimulus is held steady.

Aides

Lesson Plan

Instructor Notes

	<ul style="list-style-type: none">- Examine the alignment between the stimulus and the edge of the suspect's shoulder. <p>(2) Live Demonstration of the Mechanics of Clue No. 3.</p> <ul style="list-style-type: none">o Stimulus initially positioned approximately 12-15 inches (30-38 cm) in front of student-subject's nose, slightly higher than eye level.o <u>Slowly</u> move the stimulus toward the side, watching the eye for nystagmus.o Stop the stimulus and hold it steady when nystagmus is first observed.o Verify that the jerking is continuing.o Now determine whether the onset of nystagmus is prior to 45 degrees. <ul style="list-style-type: none">- is there white still showing in the corner of the eye?	<p>Solicit a student to participate in the live demonstration.</p> <p>Station the student-subject in a position where student's eyes can readily be seen by the class. (It may be necessary to conduct the demonstration at two or more locations.)</p> <p>Articulate each step in the procedural mechanics aloud.</p>
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is the stimulus within or only slightly beyond the edge of the shoulder?

(3) Student practice of the mechanics of Clue No. 3.

- o Practice in groups of two or three, taking turns.
- o Coaching and critiquing students practice.

- o Student-led demonstration.

7. Training Aid: The 45 Degree Template

- a. A training aid has been provided to help you practice estimating a 45 degree angle.
- b. The outline of a square, with its diagonal line, gives us a 45 degree angle.
- c. This outline, or template, is provided for practice only.

Solicit students' questions concerning the procedural mechanics for Clue No. 3.

Remind students to move stimulus slowly.

Instruct each student to practice conducting the test for onset of nystagmus prior to 45 degrees, using another student as the subject.

Common mistakes to note and correct.

- o Incorrect position of stimulus.
- o Moving stimulus too fast.

Instruct students to remove their copies of the template from their student manuals which is located at the back of Session VIII in Attachments.

Demonstrate proper placement of the template.



Display
Overhead
VIII-16

Aides

Lesson Plan

Instructor Notes

- d. To use the template, have your training partner hold the corner of the square under the nose.
- e. When you line up your stimulus with the diagonal line, your partner will be looking along a 45 degree angle.
- 8. Student practice with 45 degree Template.
 - a. Practice in groups of two or three, taking turns.
 - b. Coaching and critiquing students' practice.

It is not to be used with actual DWI suspects.

Demonstrate placement of the pencil or penlight.

Instruct students to begin by lining the stimulus up with the diagonal, so they can become familiar with the position of an eye at a 45 degree angle.

Point out the amount of white showing in the corner of an eye at 45 degrees.

Next, instruct each student to attempt to locate the 45 degree point without using the template, then to raise the template to check the accuracy of the estimate.

Common initial mistakes to note and correct:

- o Failing to check for white in the corner of the eye.
- o Failing to check alignment of object with shoulder.



Display Overhead VIII-17

- c. Student-led demonstration.

- o Tending to stop short of 45 degrees.

Choose a student who appears to be doing a good job in estimating a 45 degree angle, and have the student come forward to demonstrate to the class.

Resume student practice, and allow it to continue until all students appear reasonably proficient in carrying out the mechanics of Clue No. 3.

9. Test Interpretation.

- a. Based upon the original developmental research into Horizontal Gaze Nystagmus, the criterion for this test is 4.
- b. If a person exhibits at least 4 out of the possible 6 clues, the implication is a BAC above 0.10.
- c. Using this criterion, the test is 77% accurate.

Note: Remind students that the SFST field evaluation study conducted in San Diego in 1998 indicated that "HGN alone can provide valid indications to support arrest decisions at 0.08 BAC."

10. Test Demonstration.

Choose a student to serve as a demonstration subject.

Conduct a complete test of that student-subject, articulating every step in the testing sequence (slide VIII-15 should be redisplayed during this demonstration).



5 Minutes

Display
Overhead
VIII-18

D. Vertical Gaze Nystagmus

1. The Vertical Gaze Nystagmus test is easy to administer.
 - o Position the stimulus horizontally, approximately 12-15 inches (30-38 cm) in front of the subject's nose.
 - o Instruct the subject to hold the head still, and follow the stimulus with the eyes only.
 - o Raise the stimulus until the subject's eyes are elevated as far as possible. Hold for approximately 4 seconds.

- o Watch the eyes closely for jerking as they are held at maximum elevation.

Upon completion of the demonstration, solicit students' questions concerning Horizontal Gaze Nystagmus.

If time permits, conduct another complete demonstration of HGN, using another student.

Point out that vertical nystagmus was not examined in the original research that led to the validation of the Standardized Field Sobriety Test battery (Horizontal Gaze Nystagmus, Walk-and-Turn and One-Leg Stand).

Select a student or another instructor to serve as a subject and demonstrate the vertical nystagmus test.

Remind the students to make two checks for Vertical Gaze Nystagmus.

For VGN to be recorded, it must be distinct and sustained for a minimum of four seconds at maximum elevation.



45 Minutes



Display
Overhead
VIII-19

2. Vertical Gaze Nystagmus may be present in subjects under the influence of high doses of alcohol for that individual, and some other drugs.

E. Walk-and-Turn

1. Review of Divided Attention Definition.
 - a. Walk-and-Turn is a field sobriety test based on the important concept of divided attention.
 - b. The test requires the suspect to divide attention among mental tasks and physical tasks.
 - c. The mental tasks include comprehension of verbal instructions; processing of information; and, recall of memory.
 - d. The physical tasks include balance and coordination; the suspect is required to maintain balance and coordination while standing still, walking, and turning.
2. Test Stages
 - a. The Walk-and-Turn test has two stages, the instructions stage and the walking stage.

Selectively display overhead.



Pose this question:
"What do we mean by
'divided attention'?"

Lead the discussion, as these items were previously identified in Session VII.

Remind students that prior to administering this test, ask the subject if they have any physical problems or disabilities.

Aides

Lesson Plan

Instructor Notes

- b. Both stages are essential parts of the test.
- c. Important evidence of impairment often comes to light during both stages.

3. Test Requirements

- a. The test requires the suspect to take nine heel-to-toe steps in a straight line; to turn around in a prescribed manner; and, to return nine heel-to-toe steps along the line.
- b. This test should be conducted on a reasonably dry, hard, level, non-slippery surface.
- c. The line should be long enough to permit the suspect to take nine heel-to-toe steps along it.
- d. If a line is not available, the officer may create a line.

4. Demonstration of the Instructions Stage.

NOTE: Standardizing this test for every type of road condition is unrealistic. The original research study recommended that this test be performed on a dry, hard, level, nonslippery surface and relatively safe conditions. If not, the research recommends: 1) suspect be asked to perform the test elsewhere; or 2) only HGN be administered. However, recent field validation studies have indicated that varying environmental conditions have not affected a suspect's ability to perform this test.

NOTE: Suspects with heels 2" or higher should be given the opportunity to remove their footwear.

NOTE: If no line exists, it is acceptable to have a suspect walk an imaginary line.

When demonstrating the instructions stage, it is very important that the students be able to see the instructor's feet. It may be necessary to demonstrate at several locations in the classroom.

Aides

Lesson Plan

Instructor Notes

	<p>a. FOR STANDARDIZATION PURPOSES, instruct suspects to place left foot on the line first.</p> <p>b. Then instruct suspects to place their right foot on the line, ahead of the left foot, with heel of right against the toe of left.</p> <p>c. Tell suspect to place arms down at sides.</p> <p>d. Tell suspect to maintain that position until you have completed the instructions.</p> <p>e. Inform suspect <u>not</u> to begin walking until told to do so.</p> <p>f. At this point, ask suspect: "Do you understand?"</p>	<p><u>Remind students of officer safety precautions.</u></p> <ul style="list-style-type: none"> o keep suspect on left side during demonstrations o never turn back on suspect o aware of surroundings (environment) o left handed officers should demonstrate test at a distance more than arm's length <p>Demonstrate placement of both feet.</p> <p>Demonstrate placement of arms at sides.</p> <p>Emphasize that officer must receive some affirmative response before continuing.</p>
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Aides

Lesson Plan

Instructor Notes

- g. Although this position is not a stance that people normally will take of their own choosing, it is not difficult for an unimpaired person to maintain this stance, even for several minutes.
 - h. People who are impaired can maintain this stance if they concentrate their full attention on it.
 - i. When you are with a suspect who appears to be impaired, you may see the following behaviors during the instructions stage.
 - o Fail to maintain heel-to-toe stance.
 - o Starts walking before commanded.
 - j. Impaired suspects may concentrate so much on maintaining balance there is little or no comprehension of the subsequent instructions.
5. Demonstration of the Walking Stage.
- a. Walking stage requires nine heel-to-toe steps along the line, a turn, and nine steps back along the line.
 - b. While walking, keep the arms at the sides, count the steps out loud, and keep watching the feet.

NOTE: An impaired person cannot concentrate their full attention on maintaining the stance. They also have to listen to and comprehend your instructions.

Demonstrate.

Demonstrate.

Instructor may break away from the heel-to-toe stance at this point.

A straight line must be available for this and subsequent demonstrations.

A 10-12 foot strip of masking tape on the floor of the classroom will prove suitable.



Display
Overhead
VIII-20

- c. Execute Walk-and-Turn.
- 6. Walk-and-Turn Administrative Procedures
 - a. Initial verbal instructions
 - o Tell suspect to assume the heel-to-toe stance (left foot on line, then right foot on line, ahead of left).
 - o Tell suspect to place arms down at sides.
 - o Tell suspect not to start walking until told to do so.
 - o Make sure suspect understands instructions.
 - b. Description of basic test requirements.
 - o Tell suspect to take nine heel-to-toe steps on the line, to turn around, keeping one foot on the line, and to return nine heel-to-toe steps.
 - o Demonstrate what you mean by walking heel-to-toe. (3 steps suffice for the demonstration)
 - c. Description of turn procedures.

Instructor's demonstration.
(repeat if necessary)

Selectively reveal major sections of overhead.

NOTE: FOR STANDARDIZATION PURPOSES, suspect is told to place left foot on line first, then right foot on line, ahead of left in a heel-to-toe position.

Stress that officers should never turn their backs on suspects while demonstrating. Instead, they should walk at right angle to the line, keeping the weapon away from the suspect.

Aides

Lesson Plan

Instructor Notes

- o Ask if suspect understands the instructions. Point out that, if suspect doesn't understand some part of the instructions, officer should repeat only that part which suspect doesn't understand.

7. Demonstration of Walk-and-Turn Administrative Procedures.

- a. Tell the student-subject to assume the instructions stance.
- b. Tell the student-subject not to start walking until told to do so.
- c. Tell the student-subject of the requirement to take nine heel-to-toe steps, to turn, and to take another nine heel-to-toe steps.
- d. Tell the student-subject of the required turn procedures. Demonstrate the proper turn.
- e. Give the student-subject the final verbal instructions:
 - o Keep watching feet
 - o Count steps out loud
 - o Arms at sides
 - o Don't stop walking until test is completed.
- f. Ask student-subject if instructions are understood.

Solicit students' questions concerning the Walk-and-Turn administrative procedures.

Select a student to participate as a subject in the demonstration.

Use precise language to direct the student-subject to assume the instructions stance.

Make sure directions are understood.

Demonstrate several heel-to-toe steps.

Demonstrate the turn.

Clarify any parts that are not understandable.



Display
Overhead
VIII-21

8. Clues for Walk-and-Turn Test

- a. When administering the Walk-and-Turn test, we look for certain specific behaviors, at certain times in the test.
- b. Each behavior, or action, is considered as one clue.
- c. There is a maximum of eight clues on this test.
- d. The first two clues are checked during the instructions stage.
 - o Can't balance during instructions.

At this point, do not instruct the student-subject to execute the test. Rather, thank the student-subject for participating and allow the student to return to the seat.

Solicit students' questions concerning the test administrative procedures.

Selectively reveal major sections of overhead.

Reveal the first major section of slide VIII-21.

Emphasize that this clue is recorded only if the feet actually break apart.

Note: During the instructions stage, do not record the clue simply because suspect raises arms or wobbles slightly.

Demonstrate actions that constitute "can't balance during instructions", and demonstrate other actions that do not justify recording this clue.

Aides

Lesson Plan

Instructor Notes

- o Starts too soon.

Emphasize that this clue can't be recorded unless suspect was told not to start walking until directed to do so.

Stress to the students that these first two clues, like all clues in this test, can be accumulated only once.

Example: if the suspect loses balance twice during the instructions stage, it still only constitutes one clue.

However: on the standard note taking guide, record how many times each clue was observed.

- e. The next four clues are checked while the suspect is walking, either up or down the line.

Reveal the next major section of slide VIII-21.

- o Stops while walking (pauses to regain balance).

Emphasize that it is because of this clue that it is important to inform the suspect not to stop walking once the test begins.

- o Misses heel-to-toe.

Point out that a gap of at least one-half inch is necessary to record this clue.

- o Steps off the line.

Point out that a movement of the arms of six or more inches from the side is required to record this clue.

- o Uses arms to balance.

Demonstrate each of these clues.

Point out that it is often possible to note two of these clues simultaneously.

Aides

Lesson Plan

Instructor Notes

- f. The next clue is an improper turn. This clue should be recorded if the suspect:
 - o Loses balance on turn (staggers, stumbles, etc.); or,
 - o Turns other than the way officer demonstrated.
- g. The next clue is checked on the basis of the number of steps that the suspect actually takes.
 - o If the suspect takes other than nine steps, in either direction, it is considered only one clue.
- h. The test may be terminated if the suspect cannot safely complete it. For example:

Examples: (Demonstrate)

o pauses while walking and simultaneously raises arms.

o misses heel-to-toe and simultaneously stops walking.

Reveal the next item on slide VIII-21.

Reveal the next item on slide VIII-21.

Demonstrate various ways of "turning incorrectly" (i.e., pivots, spins).

Reveal the next item on slide VIII-21.

Emphasize that it is the number of steps that the suspect physically takes that matters here. Mistakes in the verbal count do not justify recording this clue.

Reveal the last item on slide VIII-21.

Aides

Lesson Plan

Instructor Notes

- o Suspect steps off the line three or more times.
- o Suspect nearly falls.

NOTE: If suspect can't do the test, record observed clues and document the reason for not completing the test, e.g. suspect's safety.

Emphasize that officers should be prepared to explain in court why the suspect could not complete the test.

Remember that the SFSTs are a tool to assist you in seeing visible signs of impairment and not a pass/fail test.

- o Suspect gets into a "leg-lock" position (legs crossed, unable to move)

Demonstrate "leg-lock".

Emphasize that the test should be stopped if unsafe for the suspect.

Solicit students' questions concerning the Walk-and-Turn clues.



Display Overhead VIII-22

9. Walk-and-Turn Test Interpretation

- a. Based on the original developmental research into the Walk-and-Turn test, the criterion for this test is 2.
- b. If a person exhibits at least 2 out of the possible 8 clues, the implication is that the suspect has a BAC above 0.10.
- c. Using that criterion, this test is 68% accurate.

Based on the original research.

d. Restrictions.

10. Test Demonstrations

NOTE: The original research indicated that individuals over 65 years of age had difficulty performing this test.

Choose a student to serve as a demonstration subject.

Conduct a complete test of the student-subject, carefully carrying out all of the administrative procedures. (Slide VIII-20 should be redisplayed during the demonstration.)

Have the student-subject actually perform the walking stage of the test.

Discuss the student-subject's performance in terms of the test scoring factors. (Slide VIII-25 should be redisplayed during this discussion.)

If time permits, conduct another demonstration using another student-subject.



5 Minutes

F. Combining the Clues of The Horizontal Gaze Nystagmus and Walk-and-Turn.

1. Based on the original research you will be 80% accurate in classifying suspects that are above 0.10.

NOTE: A combination of four or more clues of HGN and two or more clues of the Walk-and-Turn, suspects can be correctly classified as above 0.10 BAC 80% of the time.



35 Minutes



Display
Overhead
VIII-23

G. One-Leg Stand

1. Review of Divided Attention definition
 - a. One-Leg Stand is another field sobriety test that employs divided attention.
 - b. The suspect's attention is divided among such simple tasks as balancing, listening, and counting out loud.
 - c. Although none of these is particularly difficult in itself, the combination can be very difficult for someone who is impaired.
2. Test Stages.
 - a. Like all divided attention tests, One-Leg Stand has two stages.
 - b. They are the instructions stage and the balance and counting stage.
 - c. Both stages are important, because they can affect the suspect's overall performance on the test.

Selectively display slide.

Remind students that prior to administering this test, check if the subject has any physical problems or disabilities.

Selectively display remainder of slide.

Aides

Lesson Plan

Instructor Notes

- 3. Test Requirements.
 - a. The test requires the suspect to stand on one leg, with the other leg held out straight, approximately six inches (15 cm) off the ground, for 30 seconds.
 - b. This test should be conducted on a reasonably hard, dry, level, and non-slippery surface.

- 4. Demonstration of the Instructions Stage.
 - a. The Instructions stage of this test is quite simple.
 - o suspect stands with feet together.
 - o suspect keeps arms at the sides.
 - b. Suspect is instructed to maintain that position until told otherwise.

- 5. Demonstration of balance and count stage.

Demonstrate the One-Leg Stand.

NOTE: Standardizing this test for every type of road condition is unrealistic. The original research study recommended that this test be performed on a dry, hard, level, non-slippery surface and relatively safe conditions. If not, the research recommends: 1) suspect be asked to perform the test elsewhere; or 2) only HGN be administered.

However, recent field validation studies have indicated that varying environmental conditions have not affected a suspect's ability to perform this test.

Remind students of officer safety precautions.

Aides

Lesson Plan

Instructor Notes

- a. The verbal instructions for this test also are quite simple.
 - o Suspect must raise one leg, either leg, with the foot approximately six inches (15 cm) off the ground, keeping raised foot parallel to the ground.
 - o Suspect is told to keep both legs straight with arms at their sides.
 - o Suspect is told to look at the elevated foot.
 - o Suspect is told to hold that position while counting out loud in the following manner: "one thousand and one, one thousand and two, one thousand and three, and so on, until told to stop."

6. One-Leg Stand Administrative Procedures.

- a. Instructions stage.
 - o Stand with feet together.
 - o Keep arms at side.

Point out that the officer must demonstrate the stance.

POINT OUT THE NEED TO TIME THE 30-SECOND COUNT. Stop test at end of 30 seconds.

Point out that the 30 seconds constitute an important feature of the test. Many impaired persons can maintain balance for 20-25 seconds, but seldom for up to 30.

The suspect may be told at any time to stop counting for their safety or inability to properly perform the test.

Selectively display slide.



Display
Overhead
VIII-24

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
VIII-24A**

- o Maintain position until told otherwise.
- b. Balance and counting stage.
 - o Raise one leg, either leg.
 - o Keep raised foot approximately 6 inches (15 cm) off the ground, foot parallel to the ground.
 - o Keep both legs straight and arms at sides.
 - o Keep eyes on elevated foot.
 - o Count out loud from one-thousand-and-one, one-thousand-and-two, one-thousand-and-three, and so on until told to stop.

7. Demonstration of the One-Leg Stand Administrative Procedures.

- a. Instructions stage: tell subject to:
 - o stand with feet together
 - o keep arms at side
 - o maintain that position until told otherwise (ask if understands)

Selectively display slide VIII-24A.

NOTE: Officer should always time the 30 seconds. If the suspect puts their foot down too soon, tell suspect to keep foot elevated and continue counting. If suspect counts too slow, stop the test at 30 seconds.

Aides

Lesson Plan

Instructor Notes

- b. Balance and counting stage
 - o Raise one leg (either leg), approximately 6 inches (15 cm) off the ground, foot pointed out.
 - o Keep both legs straight.
 - o Keep eyes on elevated foot.
 - o While holding that position, count out loud in the following manner: one-thousand-one, one to one-thousand-two, one-thousand-three until told to stop.

8. Clues for the One-Leg Stand.

- a. When administering the one-leg stand test, we look for certain specific behaviors.
- b. Each behavior or action is considered one clue.
- c. There is a maximum number of 4 clues on this test.
- d. The first clue is swaying.

Always ask subject if they understand directions before beginning test.

Selectively reveal contents of slide.

Reveal the first item on slide.

Emphasize that swaying means a distinct, noticeable side-to-side or front-to-back movement of the elevated foot or of the suspect's body.

Slight tremors of the foot or body should not be interpreted as swaying.

Demonstrate swaying.



Display Overhead VIII-25

Aides

Lesson Plan

Instructor Notes

- e. The next clue is using the arms to balance.

- f. The next clue is hopping.

- g. The next clue is putting the foot down, before 30 seconds elapse.
 - o If suspect's foot touches ground, have suspect raise it and continue counting until told to stop.

- h. The test may be terminated if the suspect cannot safely complete it. For example:
 - o Suspect puts foot down three or more times.
 - o Suspect nearly falls.

Reveal the next item on slide.

Point out that a movement of the arms of six inches or more from the side is sufficient to record this clue.

Demonstrate using the arms to balance.

Reveal the next item on slide.

Demonstrate hopping.

Reveal the next item on slide.

Demonstrate putting the foot down.

Emphasize some suspects count slowly and may stand on the leg for more than 30 seconds. If suspect is counting slowly, terminate the test after 30 seconds have passed.

Point out that it is possible to note two clues simultaneously.

Examples (Demonstrate):

- o hopping and swaying
- o foot down and arms raised.

Reveal the last item on slide.

NOTE: If suspect can't do the test, record observed clues and document the reason for not completing the test, e.g. suspect's safety.



Display
Overhead
VIII-26

9. Test Interpretation.

- a. Based on the original developmental research for the One-Leg Stand test, the criterion for this test is 2.
- b. If the person exhibits at least 2 out of the possible 4 clues, the implication is that the suspect's BAC is above 0.10.
- c. Using that criterion, this test is 65% accurate.
- d. Restrictions.

10. Test Demonstrations.

Emphasize that officers should be prepared to explain in court why the suspect could not complete the test.

Remember that the SFSTs are a tool to assist you in seeing visible signs of impairment and not a pass/fail test.

Based on the original research.

NOTE: The original research indicated that individuals over 65 years of age or 50 pounds or more overweight had difficulty performing this test.

Choose a student to serve as a demonstration subject.

Conduct a complete test of the student-subject, carefully articulating the verbal instructions.



5 Minutes

H. Limitations of the Three Tests.

1. Nystagmus limitations.
 - a. A small percentage of people may exhibit nystagmus, due to certain pathological disorders.
 - b. Some suspects may exhibit Horizontal Gaze Nystagmus due to the use of alcohol and certain other drugs.
 - c. A small percentage of individuals may exhibit natural nystagmus.
2. Divided Attention test limitations.
 - a. Both the Walk-and-Turn test and the One-Leg Stand test require a reasonably smooth, level surface.
 - b. Persons with injuries to their legs, or inner ear disorders, may have difficulty with these tests or with other balance tests.

Discuss the student-subject's performance in terms of the test scoring factors. (Slide VIII-30 should be redisplayed during this discussion.)

If time permits, conduct another demonstration using another student-subject.



20 Minutes



Display
Overhead
VIII-27

I. Taking Field Notes on the Standardized Field Sobriety Tests

1. For purposes of the arrest report and courtroom testimony, it is not enough to report the number of clues on the three tests.
 - a. The numbers are important to the police officer in the field, because they help determine whether there is probable cause to arrest.
 - b. But to secure a conviction, more descriptive evidence is needed.
 - c. The officer must be able to describe how the suspect performed on the tests, and what the suspect did.
2. The standard note-taking guide is designed to help develop a clear description of the suspect's performance on the tests.
3. The section on the pre-arrest screening appears at the bottom of the guide's front side.
 - a. Complete the entire procedure for both eyes, writing "yes" or "no" for each clue.
 - o Write "yes" if the clue is present

Instruct the students to take out a copy of the note-taking guide to follow along with this discussion.

This slide will be left on display throughout the discussion.


NOTE: For standardization, test the suspect's left eye first.

Then, check for the same clue in the right eye.

Aides

Lesson Plan

Instructor Notes

	<ul style="list-style-type: none">o Write "no" if the clue is not present b. After <u>both</u> eyes have been completely checked, total the number of HGN clues observed. c. In the section labeled "other", record any facts, circumstances, conditions or observations that may be relevant to this procedure.<ul style="list-style-type: none">o Examples of additional evidence of impairment emerging while checking for nystagmus:<ul style="list-style-type: none">- suspect unable to keep head still;- suspect swaying noticeably;- suspect utters incriminating statements. o Examples of conditions that may interfere with suspect's performance while checking for nystagmus:<ul style="list-style-type: none">- wind, dust, etc. (irritating suspect's eyes);	<p>Emphasize that officers must be careful to place their check marks in the columns corresponding to the eye actually being checked.</p> <p>Point to this item on slide VIII-27. Remind students that the "number" of clues is used only for administrative purposes and that for courtroom testimony a complete description of each clue is essential.</p> <p>Point to this item on slide VIII-27.</p> <p>Give examples of facts, circumstances, etc., that should be noted in this section of the note-taking guide (i.e., Resting Nystagmus).</p> <p> Ask students to give additional examples of facts, circumstances, etc., that should be noted.</p> <p>NOTE: Always face suspect away from flashing or strobe lights.</p>
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Display
Overhead
VIII-28

4. The section on the Walk-and-Turn test appears at the top of the guide's back side.

a. First two clues are checked only during the instructions stage.

o In the boxes provided write number of times the clue appears during the instructions stage.

o Example: if suspect loses balance twice during the instructions stage, write "2" in that box.

o Example: if the suspect does not start too soon, write "0" in that box.

b. Record the next four clues separately for each nine steps.

c. If suspect stops walking, record it by drawing a vertical line across the toe at the step at which the stop occurred. Do this for each nine steps.

o How many times during first nine steps;

o How many times during second nine steps.

This slide will be left on display throughout the discussion of Walk-and-Turn scoring.

Point to the first two clues on slide VIII-28.

NOTE: Checks (✓) may be used to denote number of clues. However, always write totals (numerically) in box.

Remind students that the clue "loses balance during instructions" is recorded only if the suspect's feet "break apart".

Emphasize that students are never to leave a box blank: if the clue doesn't appear, they must indicate that by writing "0".

Point to these items on slide VIII-28.

Instruct students to place a letter "S" at bottom of vertical line to indicate "stops walking".

Remind students that, if suspect stops walking even once, that will count as one clue; but in order to prepare a clear, descriptive arrest report, it is best to document how many times suspect paused while walking.

Aides

Lesson Plan

Instructor Notes

- d. If suspect fails to touch heel-to-toe, record how many times this happens.
- e. If suspect steps off the line while walking, record it by drawing a line from the appropriate footprint at the angle in the direction in which the foot stepped. Do this for each nine steps.
- f. If suspect uses arms to balance, give some indication of how often or how long this happens.
 - o Example: suspect raised arms from sides three times;
 - o Example: suspect held arms away from sides during steps 3 through 7;
 - o Example: suspect "flapped" arms continuously.
- g. Record the actual number of steps taken by suspect, in each direction.
- h. For the next clue, "the turn," record a description of the turn.
 - o Example: turned incorrectly;
 - o Example: stumbled, to left;

Instruct students to place a letter "M" at bottom of vertical line to indicate missed heel-to-toe.

Place three ✓ (check marks) in the box.

Write "steps 3-7" in box.

Write in box.

Point out that Slide VIII-28 states "actual steps taken". Wrong number of steps is the validated clue.

Aides

Lesson Plan

Instructor Notes

- o Example: wrong direction;
- o Example: no small steps.
- i. If you terminate the test because the suspect "cannot perform test", indicate why.
 - o Example: off line 3 times;
 - o Example: staggered six steps to right, nearly fell;
 - o Example: "leg-locked" after fifth step.
- j. At end of the test, examine each factor and determine the total number of clues recorded.
- k. In the section labeled "other", record any facts, circumstances, conditions or observations that may be relevant to this test.
 - o Examples of additional evidence of impairment emerging during Walk-and-Turn test:
 - suspect verbally miscounts steps;
 - suspect utters incriminating statements.

Point to this item on slide VIII-28.

NOTE: Stop test for fear of injury to suspect.

Remind students that, even if a clue shows up more than once, each clue is counted only once.

Point to this item on slide VIII-28.

Give examples of facts, circumstances, etc., that should be noted in this section of the note-taking guide.



Display
Overhead
VIII-29

- o Examples of conditions that may interfere with suspect's performance of the Walk-and-Turn test:
 - wind/weather conditions;
 - suspect's age;
 - suspect's footwear.

- 5. The section on the One-Leg Stand test appears midway down the page.
 - a. Record the suspect's performance separately.
 - b. For each clue, record how often it appears.
 - c. If suspect sways, indicate how often with a check mark.
 - d. Indicate above the feet the number they were counting when they put their foot down.
 - e. Check marks should be made to indicate the number of times the suspect swayed, used arms, hopped or put foot down.
 - o Place check marks in or near the small boxes to indicate how many times you observed each of the clues.



Ask students to give additional examples of facts, circumstances, etc., that should be noted.

NOTE: Suspects with heels 2" or higher should be given the opportunity to remove their footwear.

This slide will be left on display throughout the discussion of one-leg stand clue.

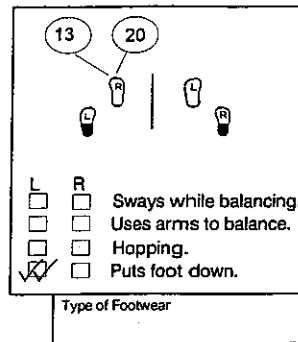
Point out that, by recording when things happen as well as what happens, a more descriptive arrest report can be prepared.

In addition, if the suspect puts the foot down during the test, record when it happened. To do this, write the count number at which the foot came down.

For example, suppose that, when standing on the left leg, the suspect lowered the right foot at a count of "one thousand and thirteen," and again at "one thousand and twenty;" Your diagram should look like the sketch to the right.

- d. If suspect uses arms to balance, indicate how often arms were raised.
- e. If suspect hops, indicate how many hops were taken.
- f. If suspect puts foot down, indicate how many times the foot came down.
- g. If you terminate the test for "cannot perform test", indicate explicitly why you did so.
 - o Example: foot down 3 times;
 - o Example: staggered three steps to right, then fell;

Demonstrate the proper documentation for observed clues.



Point to this item on slide VIII-29.

Aides

Lesson Plan

Instructor Notes

- o Example: continuous hopping, flailing arms, nearly falling.

- h. At end of the test, examine each clue and determine how many clues have been recorded.


- i. Write the number in the "total clues" box.

- j. In the section labeled "other", record any facts, circumstances, conditions or observations that may be relevant to this test.
 - o Examples of additional evidence of impairment emerging during one-leg stand test:
 - suspect verbally miscounts 30 seconds;
 - suspect utters incriminating statements.

Remind students that, even if a clue shows up more than once, each clue is counted only once.

Point to this item on slide VIII-29. **Remind students that "number" of clues is utilized only for administrative purposes and that for courtroom testimony a complete description of each clue observed is essential.**

Point to this item on slide VIII-29.

 Ask students to give additional examples of facts, circumstances, etc., that should be noted.

Give examples of facts, circumstances, etc., that should be noted in this section of the note-taking guide (i.e., untied shoelaces, removed footwear, etc.).

Aides

Lesson Plan

Instructor Notes

- o Examples of conditions that may interfere with suspect's performance of one-leg stand:
 - wind/weather conditions;
 - suspect's age;
 - suspect's footwear.

NOTE: Suspects with heels 2" or higher should be given the opportunity to remove their footwear.

Solicit students' questions concerning field note taking.

40 Minutes

SESSION IX
TEST BATTERY DEMONSTRATIONS

SESSION IX

TEST BATTERY DEMONSTRATIONS

Upon successfully completing this session, the student will be able to:

- o Demonstrate the appropriate administrative procedures for the Standardized Field Sobriety Testing Battery.

CONTENT SEGMENTS





- A. Live Classroom Demonstrations
- B. Video Tape Demonstration

LEARNING ACTIVITIES

- o Instructor-Led Demonstration
- o Student Demonstration
- o Video Tape Presentation



Display Slide IX-O (Session Objectives)

Aides	Lesson Plan	Instructor Notes
	IX TEST BATTERY DEMONSTRATIONS	
40 Minutes		
	A. Live Classroom Demonstrations	
30 Minutes	1. Instructor-led demonstrations.	Choose a student-subject.
	a. Horizontal and Vertical Gaze Nystagmus.	Administer the three tests to the student-subject, in sequence.
	b. Walk-and-Turn.	Carefully articulate all verbal instructions and physical demonstrations.
	c. One-Leg Stand.	Discuss student-subject's test performances.
	2. Student-led demonstration.	Choose a second student-subject, and repeat the sequence of test administrations.
	a. Horizontal and Vertical Gaze Nystagmus.	Choose a student to serve as the test demonstrator.
	b. Walk-and-Turn.	Choose another student to serve as the test subject.
	c. One-Leg Stand.	Monitor and critique demonstrator's administration of the three tests.
	B. Videotape Demonstration (optional)	Show the NHTSA video tape entitled "Standardized Field Sobriety Testing." (Last segment on tape one.)
	Note: This is the same video segment as shown in Session VII, Phase III, Pre-Arrest Screening.	If this video was not shown in Session VII -- show here.
	1. Videotape Segment #8	
		
10 Minutes		
		
HS 178 R9/04	IX-1	

Aides

Lesson Plan

Instructor Notes

Solicit and answer students' questions concerning SFST administrative procedures.

Fifty Minutes

SESSION X
"DRY RUN" PRACTICE SESSION

SESSION X

"DRY RUN" PRACTICE SESSION

Upon successfully completing this session, the student will be able to:

- o Demonstrate the proper administration of the three Standardized Field Sobriety Tests.

CONTENT SEGMENTS

- A. Procedures and Group Assignments
- B. Live Administration of SFST Battery
- C. Hands-on Practice

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Student Practice Session
- o Instructor-Led Presentation



Display Slide X-0 (Session Objectives)

Aides

Lesson Plan

Instructor Notes



50 Minutes



5 Minutes

X "DRY RUN" PRACTICE SESSION

A. Procedures and Group Assignments

1. Assign students to work in teams of three or four.
2. Each student will conduct a complete series of tests, using a fellow team member as a subject.
 - a. Horizontal and Vertical Gaze Nystagmus.
 - b. Walk-and-Turn.
 - c. One-Leg Stand.
3. Team members who are not immediately participating in a series of tests (either as test administrator or as test subject) are expected to take notes on test administrator's performance, and to offer constructive criticism.
4. Once one team member has administered a complete series of tests, other members of the team follow in turn.
5. Practice is to continue until every student has administered a complete series of the three tests at least once.

Make team assignments.

Make sure that all students understand the practice procedures.

Students should use the checklist to record each other's performance.

Aides

Lesson Plan

Instructor Notes



15 Minutes

B. Live Administration of SFST Battery

Instructor to conduct the three standardized field sobriety tests on an instructor.

Students to observe technique and scoring only.



30 Minutes

C. Hands-on Practice

Students carry out "dry run" practice procedures.

Instructors circulate among teams to observe and coach students' performance, as necessary.

Two Hours

SESSION XI

"TESTING SUBJECTS" PRACTICE: FIRST SESSION

SESSION XI

"TESTING SUBJECTS" PRACTICE: FIRST SESSION

Upon successfully completing this session, the student will be able to:

- o Properly administer the SFST's.
- o Properly observe and record subject's performance utilizing the standard notetaking guide.
- o Properly interpret the subject's performance.
- o Proper use and maintenance of the SFST Field Arrest Log.

CONTENT SEGMENTS

- A. Procedures
- B. Hands-on Practice
- C. Use and Maintenance of SFST Field Arrest Log
- D. Session Wrap-Up

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Student Practice Session
- o Instructor-Led Presentation
- o Instructor-Led Discussion



Display Slide XI-O (Session Objectives)

Aides

Lesson Plan

Instructor Notes



2 Hours



5 Minutes

**XI "TESTING SUBJECTS"
PRACTICE: FIRST
SESSION**

A. Procedures

1. Students work in the same teams that were constituted for the Dry Run Practice Session.
2. Each team will test at least as many drinking volunteers as the team has members.
3. Each team member will administer one complete series of tests to at least one drinking volunteer.
4. If time permits, teams will test additional volunteers.
5. While one student is administering tests to a volunteer, the other team members will observe and record the volunteer's performance.
6. As soon as the team has completed the SFSTs on a particular volunteer, the volunteer must be escorted by a monitor to the next scheduled team.
7. Upon termination of this practice segment, monitors will escort the volunteer subjects to the Breath Testing Station.

NOTE: See Section E, "Guidelines for Controlled Drinking Practice Sessions", pages 12-14 of the Administrator's Guide.

Make sure that all students understand the practice procedures.

Example: If a team has four members, that team will administer a complete set of tests to at least four volunteers.

Emphasize that each team member is to prepare a descriptive, written test record on each volunteer tested (using the standard note-taking guide).

Example: Three members in a team evaluating one subject will result in three individual written records. EACH team member must determine if the subject should or should not be arrested.

Define the sequence in which volunteers will circulate among teams.

Emphasize that teams will not be informed of the volunteers' BACs until the session "Wrap-Up".

Aides

Lesson Plan

Instructor Notes



90 Minutes

B. Hands-on Practice

Students carry out the "drinking subjects" practice procedures.

Instructors circulate among teams to observe and coach students' performance, as necessary.

Upon completion of practice, teams escort volunteers to the Breath Testing Station.

Teams return to classroom to complete report writing assignment. An instructor records the BACs of the volunteer.



5 Minutes

C. Use and Maintenance of SFST Field Arrest Log (IACP strongly recommends the use of this log)

1. If options using video tape subjects are used, maintaining the SFST Field Arrest Log is mandatory and extremely important.
2. The SFST Field Arrest Log is used to record the results of the SFSTs performed on suspected impaired subjects.
3. This log is extremely important in documenting an officer's experience and proficiency in performing and interpreting SFSTs.
4. This log has the following components:
 - a. The actual date the SFSTs were administered.

(Sessions XI-A or XIV-A)

Point out log should be used to record the results of ALL SFSTs administered.

Emphasize: The logs may be used as evidence in court.



Display Overhead XI-1

Aides

Lesson Plan

Instructor Notes

- b. Subject's full name.
- c. Results of each SFST test.
- d. Classification of BAC as above or below 0.10 BAC.
- e. Arrest/Not Arrest.
- f. Subject's measured BAC (if available).
- g. Remarks.

5. Utilization of log.

D. Session Wrap-Up

- 1. Teams report their observations of volunteers.
- 2. Instructors notify students of volunteers' BACs.

Direct students to transfer their documentation from the notetaking guide to the log.

NOTE: Classification should reflect your state standard (i.e., 0.08, 0.10).

Solicit SFST results on each volunteer. Record results on chalkboard (See sample chalkboard array on next page).

Instructor notifies students of volunteers' BACs, as obtained during the breath tests.

Write BACs next to volunteers' names or code letters on the chalkboard.

Solicit students' comments, questions or observations concerning the relationship between volunteers' BACs and their performances on the tests.



20 Minutes



SAMPLE CHALKBOARD ARRAY FOR
TABULATING RESULTS

<u>"Designated Suspects"</u>	<u>Horizontal Gaze Nystagmus</u>	<u>Walk And Turn</u>	<u>One-Leg Stand</u>	<u>Arrest ?</u>
"A"	_____	_____	_____	_____
"B"	_____	_____	_____	_____
"C"	_____	_____	_____	_____
"D"	_____	_____	_____	_____
"E"	_____	_____	_____	_____
"F"	_____	_____	_____	_____
"G"	_____	_____	_____	_____
"H"	_____	_____	_____	_____
"I"	_____	_____	_____	_____
"J"	_____	_____	_____	_____

Two Hours

SESSION XI-A

"TESTING SUBJECTS" PRACTICE: FIRST SESSION

(USED FOR OPTIONS ONE OR TWO)

SESSION XI-A

"TESTING SUBJECTS" PRACTICE: FIRST SESSION

Upon successfully completing this session, the student will be able to:

- o Properly administer the SFST's.
- o Properly observe and record subject's performance utilizing the standard notetaking guide.
- o Properly interpret the subject's performance.
- o Proper use and maintenance of SFST field arrest log.

CONTENT SEGMENTS

- A. Procedures
- B. Practical Exercise
- C. Use and Maintenance of SFST Field Arrest Log
- D. Session Wrap-Up

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Student Practice Session
- o Instructor-Led Presentation
- o Instructor-Led Discussion



Display Slide XI-A-O (Session Objectives)

Aides

Lesson Plan

Instructor Notes



2 Hours



5 Minutes

**XI-A "TESTING SUBJECTS"
PRACTICE: FIRST
SESSION**

A. Procedures

1. Students work in the same teams that were constituted for the Dry Run Practice Session.
2. Distribute video score sheets, have students fill in their name and team number.
 - a. Advise students that each subject will be viewed performing all three tests. Pauses are provided between each test to allow students time to record observed clues.
 - b. Advise students that when viewing the administration of HGN (in the check for angle of onset) they will be provided two views. The first will show the stimulus in relation to the subject's shoulder at onset. The second view will be a close-up of the eye captured in that position.

Make sure that all students understand the practice procedures.

NOTE: Have sufficient copies of handout XI-A1 available. (Minimum of six copies per student.)

NOTE: Point out that students will have only one chance to view each subject. Review can be conducted after the "wrap-up".

Students shall record the number of clues observed, in the boxes located opposite each test.



90 Minutes

c. Advise students that two views of the subject performing the walk and turn are also provided. The first is an overall view of both stages. The second is a close up of the subject's feet while walking.

B. Practical Exercise

1. Divide class into two groups.

2. It is recommended that half the class perform the SFSTs under the direction of instructor while the remainder of the class views, records and interprets the NHTSA/IACP approved video tapes for this session. Once completed, the groups switch roles.

3. If time permits, students will administer additional tests to each other.

C. Use and Maintenance of SFST Field Arrest Log



5 Minutes

Each team member will administer a complete SFST battery on another student under the direct supervision of an instructor.

EACH team member viewing the video tapes must determine if the subject should or should not be arrested.

Emphasize that each officer is to prepare a descriptive, written test record on each video taped subject, using the standard notetaking guide.

Emphasize that teams will not be informed of the volunteers' BACs until the session "Wrap-Up".

Aides

Lesson Plan

Instructor Notes



**Display
Overhead
XI-A-1**

1. If options using video-taped subjects are used, maintaining the SFST Field Arrest Log is mandatory and extremely important.
2. The SFST Field Arrest Log is used to record the results of the SFSTs performed on suspected impaired subjects.
3. This log is extremely important in documenting an officer's experience and proficiency in performing and interpreting SFSTs.
4. This log has the following components:
 - a. The actual date the SFSTs were administered.
 - b. Subject's full name.
 - c. Results of each SFST test.
 - d. Classification of BAC.
 - e. Arrest/Not Arrest.
 - f. Subject's measured BAC (if available).
 - g. Remarks.
5. Utilization of log.
 - a. The documentation will include subject's name, date, results of each test, the officer's classification of subject's BAC and measured BAC, if available. A sample log is included in Session VIII.

Point out log will be used to record the results of ALL SFSTs administered.

Emphasize: The logs may be used as evidence in court.

Direct students to transfer their documentation from the notetaking guide to the log.

Point out each category as it is addressed.

Above or below your state's limit (i.e., 0.10 BAC or 0.08 BAC).

NOTE: Student may enter refusals, referrals to DRE or other appropriate information.



20 Minutes

D. Session Wrap-Up

1. Officers report their observations of video-taped subjects.
2. Instructors notify students of video-taped subjects' BACs.

Solicit officer's SFST results on each video-taped subject. Record results on chalkboard (See sample chalkboard array on next page).

Instructor notifies students of video-taped subjects' BACs.

Write BACs next to video-taped subjects' names or code letters on the chalkboard.

Solicit students' comments, questions or observations concerning the relationship between video-taped subjects' BACs and their performances on the tests.

SAMPLE CHALKBOARD ARRAY FOR
TABULATING RESULTS

<u>"Designated Suspects"</u>	<u>Horizontal Gaze Nystagmus</u>	<u>Walk And Turn</u>	<u>One-Leg Stand</u>	<u>Arrest ?</u>
"A"	_____	_____	_____	_____
"B"	_____	_____	_____	_____
"C"	_____	_____	_____	_____
"D"	_____	_____	_____	_____
"E"	_____	_____	_____	_____
"F"	_____	_____	_____	_____
"G"	_____	_____	_____	_____
"H"	_____	_____	_____	_____
"I"	_____	_____	_____	_____
"J"	_____	_____	_____	_____

One Hour and Thirty Minutes

SESSION XII
PROCESSING THE ARRESTED SUSPECT
AND
PREPARATION FOR TRIAL

SESSION XII

PROCESSING THE ARRESTED SUSPECT AND PREPARATION FOR TRIAL

Upon successfully completing this session, the student will be able to:

- o Discuss the importance of correct processing and report writing procedures in DWI arrests.
- o Discuss the correct sequence of DWI suspect processing procedures.
- o Discuss the essential elements of the DWI arrest report.
- o Discuss the importance of pretrial conferences and presentation of evidence in the DWI trial.

CONTENT SEGMENTS

- A. The Processing Phase
- B. Preparing the DWI Arrest Report:
Documenting The Evidence
- C. Narrative DWI Arrest Report
- D. Case Preparation and Pretrial Conference
- E. Guidelines for Direct Testimony

LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Video-Tape Presentation
- o Interactive Discussion
- o Video-Tape Presentation
- o Video-Tape Presentation



Display Slide XII-O (Session Objectives)



90 Minutes



5 Minutes



Display Overhead XII-1

XII PROCESSING THE ARRESTED SUSPECT AND PREPARATION FOR TRIAL

A. The Processing Phase

1. Relationship to overall DWI enforcement function.
 - a. Processing of arrested suspect is the bridge between arrest and conviction of a DWI offender.
 - b. During processing phase, all evidence gathered during the detection phases is organized to ensure that it will be available and admissible in court.
 - c. Additional evidence may be obtained during the processing phase, subsequent to arrest.
 - d. It is important that proper procedures be followed during this phase; otherwise, important evidence might be ruled inadmissible, and therefore worthless.
2. The processing phase begins with the arrest of the offender.
3. Processing ends when the offender is incarcerated or released to a responsible third party (depending on jurisdiction).

Remind students to become thoroughly familiar with their agency's guidelines for processing individuals.

? Ask a student to give an example of such post-arrest evidence. (e.g. evidential chemical test).

? Ask a student to suggest how a procedural error during the processing phase might cause some evidence to be ruled inadmissible.



15 Minutes

**B. Preparing the DWI Offense/
Arrest Report: Documenting
the Evidence**

1. Successful prosecution depends on clarity and completeness with which the arresting officer's and the evaluator's observations are presented.
 - a. Arresting officer must be able to convey observations with sufficient clarity to convince others there was probable cause to believe the suspect was under the influence.
 - b. Chemical test evidence and additional evidence gathered subsequent to the arrest may be suppressed if the arresting officer does not adequately establish probable cause for the arrest prior to the chemical test.
 - c. DWI trials are often held many months after the defendant's arrest.
 - d. A clear, concise report will enable the officer to recall those details and present them through direct testimony.
2. Evidence must be clearly conveyed in the formal structured reports (forms) and in a narrative offense/arrest report.

Point out that officer's efforts in detecting, apprehending, investigation, arresting and testing DWI offenders are of little value if officer cannot document sufficient evidence to prove each element of the DWI offense.



Display
Overhead
XII-2

3. A well-written, clear and convincing narrative report increases the likelihood that conviction will result because:
 - o Prosecutor is more likely to file the charge if the evidence is organized, clearly documented and compelling.
 - o Defense is less likely to contest the charge when the report is descriptive, detailed and complete.
 - o Helps to ensure convincing verbal testimony in court.
4. The written report should document all evidence available to establish the essential ingredients of the prosecution's case.
 - a. That there was probable cause for arrest.
 - (1) the accused was the operator or in actual physical control of the vehicle;
 - (2) there was reasonable suspicion for stopping/ contacting the accused; and,
 - (3) there was probable cause to believe the accused was impaired.
 - b. That proper arrest procedures were followed.
 - c. That proper procedure was followed with regards to the rights of the accused.

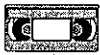
NOTE: Instructor should be familiar with all applicable state laws defining these terms.

- d. That subsequent observation and interview of the accused provided additional evidence relevant to the alleged offense.
- e. That there was a proper request for the accused to submit to the chemical test.

5. The narrative offense/arrest report should be organized around the total sequence of events, beginning at the first observation of the offender, continuing through the arrest, and ending with the incarceration or release of the subject.

6. The DWI Investigation Field Notes describing the evidence observed during the three phases of detection greatly assist preparation of the narrative offense/arrest report.

7. Videotape segment of nighttime DWI arrest.



Videotape



20 Minutes

C. Narrative DWI Arrest Report

- 1. Report writing is an essential skill for every officer.
- 2. While there is no one best way to write a report, it is helpful to follow a uniform format.

Handout copies of DWI Investigation Field Note form. Show videotape #2 segment #1. Allow students 4-5 minutes to complete notes.

Point out that good report writing becomes second nature with practice.

Point out that officers should be guided by departmental policies and/or instructions or requirements specified by the prosecutor.

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Lesson Plan

Instructor Notes



Display
Overheads
XII-3A and
3B.

3. Observation/results recorded on the field notes can be used to refresh the officer's memory when preparing the narrative report.

4. Suggested report writing format.
 - a. Initial Observations
 - o First observations of the offender and their actions;
 - o Factors that drew officer's attention;
 - o Time and location of first observations.

 - b. Vehicle Stop
 - o Unusual actions taken;
 - o Offender's response to the stop command;
 - o Method(s) officer used to signal the stop command;
 - o The fashion in which the offender stopped the vehicle.

 - c. Face-to-Face Contact
 - o Offender's personal appearance;
 - o Condition of eyes, speech, etc.;

Selectively reveal the essential elements of narrative report via slides XII-3a and XII-3b.

Point out that not every report will require all elements: some may be missing or irrelevant to some DWI investigations.

Briefly discuss each element.


Aides**Lesson Plan****Instructor Notes**

- o Names, numbers, seating locations of passengers;
- o Unusual actions taken;
- o Unusual statements made;
- o What officer saw, heard and smelled.
- d. Operation/Actual Physical Control.
 - o Establish offender as the operator.
- e. Exit from Vehicle
 - o Unusual actions, occurrences.
- f. Field Sobriety Tests
 - o Physical performance;
 - o Mental performance.
- g. The Arrest
- h. Disposition/Location of Vehicle and Keys
- i. Disposition of Passengers and Property.
- j. Transport of Offender
 - o Departure time;
 - o Arrival time.
- k. Evidential Tests
 - o What tests;
 - o Who administered;
 - o Test results.

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<p> 25 Minutes</p>	<ul style="list-style-type: none">I. Implied Consent/Miranda Admonitions<ul style="list-style-type: none">o When given.m. Statements of Witnessesn. Notification of Offender's Attorney or Other Party<ul style="list-style-type: none">o Time of call(s);o Result of call(s).o. Citations/Complaints<ul style="list-style-type: none">o Charges issued;o When issued.p. Incarceration or Release<ul style="list-style-type: none">o Time;o If released, to whom.q. Additional Chemical Tests<ul style="list-style-type: none">o Types of test;o Time taken;o Where taken;o By whom administered.5. Video presentation "Conducting The SFSTs on a DUI Stop"<ul style="list-style-type: none">a. Discussion D. Case Preparation and Pretrial Conference<ul style="list-style-type: none">1. Guidelines for case preparation.	<p>Solicit students' questions concerning the narrative DWI arrest report elements.</p> <p>Refer students to sample report in their manual.</p> <p>Show segments 1 and 2 of tape two. Distribute copies of sample narrative arrest report.</p> <p>Emphasize the Phase One, Two, and Three indicators of impairment.</p> <p>Solicit students questions and comments concerning the video and sample narrative report.</p>
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	<p>a. Case preparation continues with your first contact with the subject:</p> <ul style="list-style-type: none">o Use field notes to document evidence.o Accurately note statements and other observations.o Review the case with other officers who witnessed the arrest or otherwise assisted you and note relevant facts. <p>b. Upon receipt of subpoena or other notification of trial date:</p> <ol style="list-style-type: none">(1) Review all records and reports.<ul style="list-style-type: none">o Field noteso Narrative reporto Chemical test resultso Other(2) Revisit the scene if appropriate.(3) During discovery, list all evidence and properly document it.(4) Compare notes with assisting officers.	<p>Point out that it is essential that reports are corroborative or when differences occur, that they be adequately explained. The defense will try to impeach your testimony over any inconsistencies.</p> <p>? Ask students to identify relevant records/reports to be reviewed. Probe until appropriate items are identified.</p> <p>Point out that evidence will not be admitted if these procedures are not followed.</p> <p>Exactness and attention to detail are very important.</p>
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- 2. The pretrial conference.
 - a. Successful DWI prosecution also depends on clarity and completeness with which an officer's observations are presented.
 - (1) Officer must be able to convey observations with sufficient clarity to convince others that there was probable cause to believe the suspect was under the influence.
 - (2) Chemical test evidence may be suppressed if the officer does not adequately establish that there were reasonable grounds for the arrest prior to the test.
 - b. A pretrial conference with the prosecutor assigned to the case is essential. Try to insist on a pre-trial conference if at all possible.
 - (1) The prosecutor needs an opportunity not only to review the evidence but to discuss case strategy.
 - (2) **BE HONEST AND FORTHRIGHT.**
 - (3) Review all evidence and reasons for your conclusions.

Emphasize that the defendant in a DWI case could be acquitted if the officers testimony was not sufficient to establish probable cause or prove beyond a reasonable doubt that the defendant was impaired.

Point out to students that the prosecutor will be able to develop an officer's testimony to bring out the most important facts necessary to convict the defendant.

Point out that there should be "no surprises" during the trial.

Aides

Lesson Plan

Instructor Notes



25 Minutes

3. Pretrial conference

- a. Videotape
- b. Discussion

E. Guidelines for Direct Testimony

1. General guidelines.

- a. Basic job is to prove that suspect was impaired by alcohol and/or other drugs.
- b. Don't be afraid to say "I don't know."
- c. Avoid contact with the defense attorney if possible.
- d. Don't be upset if prosecutor and defense attorney appear friendly to each other.
- e. Jury focuses on an officer's demeanor more than content of testimony.
- f. Do not bring manuals or articles into court for reference.

If time allows, show videotape #2 segment #2 . (10 minutes)

Emphasize the importance of the discussion of a DWI case between the arresting officer and the prosecuting attorney prior to going to trial.

Solicit students' questions concerning the pretrial conference.

Keep this in mind at all times.

Remind students that both sides have a specific role to play in the case, but that does not preclude a personal or professional relationship.

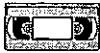
Point out that officer should be polite and courteous during testimony...do not become agitated as a result of defense questions. Do not take personal issue with defense statements, stick to the facts.

Review training manuals and other materials before court to become familiar with contents.

Aides

Lesson Plan

Instructor Notes

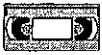
	<p>g. Explain technical terms in layman's language.</p> <p>h. Pay attention to what evidence/testimony can be and is excluded.</p> <p>i. When describing suspect's performance on SFST's, state that suspect "performed the test as demonstrated" or "did not perform the test as demonstrated." Provide specific descriptive details concerning exactly what the suspect did or failed to do on the test (e.g., "stepped off the line twice and staggered while turning.")</p> <p>j. <u>Do not</u> appear biased against defendant. Testify accurately and completely, but also dispassionately.</p> <p>2. Video segment three, tape two (The Courtroom Testimony)</p>	<p>For example, nystagmus means an involuntary jerking of the eyes. Horizontal Gaze Nystagmus occurs as the eyes gaze toward the side.</p> <p>Point out that if officer testifies on subject matter that was excluded, it could result in a mistrial.</p> <p>Be sure to emphasize that <u>all</u> evidence is taken into account before forming an opinion.</p> <p>Point out that officers should <u>not</u> embellish their testimony...be careful not to open any doors for the defense.</p> <p>Point out that the defense attorney's job is to try to create a "reasonable doubt." Don't take it personally.</p> <p>During this video segment, the prosecutor asks three important questions of the officer. Each question is followed by a stop sign icon.</p>
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Aides

Lesson Plan

Instructor Notes

	<p>3. Typical defense tactics.</p> <p>a. The defense relies on several factors to "impeach" or discredit your testimony.</p> <p>(1) By impeaching your credibility:</p> <ul style="list-style-type: none">o Inconsistencieso Comparison with past testimonyo Testimony that is at odds with other established expertso Lack of recall <p>b. By exposing the court to alternative conditions which account for your observations:</p> <ul style="list-style-type: none">o Sickness,o Injury,o Other.	<p>Instructors are asked to solicit responses from the students on how they would answer that question. Discussion can follow.</p> <p>Arresting officer's and assisting officer's testimony should be corroborative. Any differences <u>must</u> be explained.</p> <p>Get your facts straight and stick to them.</p> <p>Try to get copies of transcripts of previous trials to review your strong/weak points. If possible, review your testimony with the prosecutor.</p> <p>Do your homework...review the literature. Explain any differences if possible.</p> <p>Try to be prepared, but don't be afraid to say "I don't know." Be honest.</p>
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- c. Defense will challenge your credentials... a bona fide expert has both formal training resulting in a high degree of knowledge and experience in applying that knowledge, by:
 - o Directly challenging formal training and experience.
 - o Demonstrating the officer lacks knowledge in the field by contrasting officer's knowledge with the defense expert's knowledge.
 - d. By demonstrating that the officer did not follow testing procedures established by departmental policy, training or legal precedent.
4. Video segment four, tape two (DWI Courtroom Testimony)
- a. Video
 - b. Discussion

Point out that if the defense can discredit your training and/or experience your testimony will have little "weight" with the jury.

The trial tactic is to show that the officer does not have the expertise to accurately identify impairment because of inadequate formal training which lessens the value of field experiences and increases likelihood that the officer's conclusions are wrong.

Point out that field sobriety tests should be administered "by the book" each and every time they are conducted.

If time allows, show the video segment of actual courtroom testimony in "DWI Courtroom Testimony" (15 minutes).

Summarize the relationship between detection phases, field notes, narrative report, pre-trial conference and direct testimony.

Emphasize the need for clear and convincing testimony.

Solicit students questions and comments concerning direct testimony.

TRIAL TIPS & TECHNIQUES

Courtroom Decorum

1. **TELL THE TRUTH.** Honestly is the best policy. Telling the truth requires that a witness testify accurately as to what he knows. If you tell the truth and are accurate, you have nothing to fear on cross- examination.
2. Condense your professional resume on to a 3x5 card, which you bring to court with you each time you receive a subpoena. On it, include your P.O.S.T. certification date, classes taken as a law enforcement officer, and other special awards or permits you have.
3. **READ YOUR INCIDENT REPORT** before you come to court. Go over the details in your mind so that you will have an independent recollection of the events of the arrest. **DO NOT** come to court and ask the prosecutor for a copy of your report. Do ask, prior to court, if you cannot locate a copy of your report.
4. Dress neatly and professionally; leave sunglasses, PR-24, flashlight and other cumbersome equipment in your car before coming into the courtroom, unless needed for a demonstration. Wear a coat and tie if you prefer.
5. Do not guess the answer to any question asked. It is **OKAY** to say "I don't know" or "I can't remember" in response to questions. Do not give the impression that you are guessing the answer by prefacing your response with "I think" or "I believe." If you do not know the answer, it is okay to look at your report and refresh your memory. Always give definitive, positive, sure answers.
6. Listen carefully to the question asked. Do not begin your answer until the prosecutor has finished asking the question. Be sure you understand the question before you attempt to give an answer. If necessary, ask that the question be repeated or rephrased if you do not understand it.
7. Take your time. Do not feel pressured to give a quick answer. After a question is asked, there may be an objection; allow this to happen. When you hear the word, "objection", stop testifying.

8. Answer the question that is asked, then stop. Do not volunteer information not asked for, or you will risk causing a mistrial, or even an immediate acquittal. DO explain an answer, if you feel your answer might appear ambiguous to the jury. You are always permitted to explain your answer. Tell the prosecutor prior to your testimony if there is anything you feel the prosecutor needs to know, but might not!
9. Be serious in the courthouse...Jurors are aware that criminal prosecutions are serious business.
10. Speak clearly and loudly enough so that you can be easily heard.
11. Look at the jury when testifying, even when the defense attorney asking the question is not standing near the box. Always talk to the jury, and maintain eye contact with them, even if it feels unnatural to you.
12. Always be courteous, even when the defense attorney is not. Control your temper, and never allow yourself to be drawn into an argument with that attorney. Remember, the best way to make a good impression with the jury is to appear courteous and professional. You were just doing your job during the arrest, and you do not have a personal stake in the case.
13. Testify in English. Do not say, "The perpetrator exited the vehicle" when in reality "the defendant got out of his car." The person on trial is never a "lady" or "gentlemen," but is always "the defendant." Do not use military times without clarifying the time in laymen's terms. Do not use call signals. It makes more sense to the jury when you speak the same language as they do.
14. It is permissible and desirable to discuss the case with the prosecutor before trial. A defense attorney may ask this question; tell the truth. Obviously, a prosecutor will try to discuss the case with the witnesses before trial; be straight forward in answering this question.
15. A defense attorney will always ask whether you have an independent recollection of the case. That is, aside from your police report or other notes, do you remember the event? Any fact that you remember about the stop and/or arrest of the defendant would be sufficient to answer this question positively.

Specific DUI Trial Recommendations

1. Never give the numerical alco-sensor reading of the defendant when asked by the prosecutor. However, if the defense attorney asks you for the NUMERICAL reading, give it to him/her. The prohibition of alco-sensor results of a defendant do not apply to witnesses, such as passengers in the car.
2. Always demonstrate how you conducted field sobriety evaluations. If the prosecutor forgets to ask you to come off the witness stand to demonstrate, suggest that it will aid your testimony. Be certain, however, that you can do in court all the evaluations you asked the defendant to perform the night of the arrest. If you cannot do them, the jury will not expect the defendant to have done them properly.
3. Know the reasons for giving field sobriety evaluations:
 - They are **divided attention test**, designed to detect when a person is impaired by alcohol and/or drugs.
 - They provide evidence of intoxication in case defendant refuses to take a state administered test under implied consent.
 - They prevent an arbitrary decision to arrest, and allow an Office to articulate the reasons for concluding a driver was DUI to someone not present at the scene.
4. You are not required to know, and in fact know nothing, about the Intoxilyzer 5000 or your jurisdiction breath test instrument, its internal workings or anything other than how to operate it and take a breath sample from a defendant. You are merely an operator of an instrument, and while you have been taught something about how the instrument works when you became certified as an operator, never testify to its internal workings, or the defense attorney will discredit you, and make you out to be a "thinks-he-knows-it-all" who really knows nothing.

Do Not bring the Intoxilyzer 5000 Operator's manual to court, or the log, unless instructed to by the prosecutor. Discuss any subpoena to produce that you may receive with the prosecutor, before complying with the subpoena.

5. Be aware that the margin of error in the Intoxilyzer 5000 is not + or - .02. The .02 grams comes into play in that the State's breath test results are not admissible if the sequential breath tests differ by more than .020 grams. If the two breath samples differ by more than .02 grams then the Intoxilyzer 5000 will give you an error message and you can either wait 20 minutes and give the defendant another breath test or take the defendant for a blood test. Also, margin of error only applies to statistical sampling such as polling data used in political campaigns. It does not apply to scientific instruments such as the Intoxilyzer 5000. According to the manufacturer the precision of the instrument is a standard deviation of 0.003 BrAC or better and the accuracy is better than federal requirements, $\pm 3\%$ or ± 003 BrAC, whichever is greater. Furthermore, the instrument has been approved by the Federal Department of Transportation.
6. If you get an "Invalid Sample" on the Intoxilyzer 5000 the instrument has detected residual mouth alcohol in the subject's breath. You must restart a twenty-minute waiting period and repeat the test or take the subject for a blood test. Remember to write the blood drawer's name on the police report! It is also a "best practice" to witness the blood draw yourself – this may allow the prosecutor not to have to call the hospital personnel as a witness.
7. When testifying about field sobriety evaluations remember to discuss the level of impairment of the defendant. Officers can testify to numerical scores on a field sobriety test, including HGN, and can testify to the level of impairment. For example you could say; "the defendant scored four out of a possible six clues on the HGN and four clues is considered impaired." Sieveking v. State, 220 Ga. App. 218 (1996). A police officer can state a defendant "failed" a field sobriety test. **However, see number 9 below!!!!**
8. If you are NHTSA trained and testify as to the accuracy of the field sobriety tests, make sure you know the numbers and their significance. Considered independently, the Nystagmus test was 77% accurate, the Walk-and-Turn, 68% accurate, and the One-Leg Stand, 65% accurate in identifying subjects whose BAC were .10 or more. NHTSA also found that it would be possible to combine the results of Nystagmus and Walk-and-Turn in a: decision matrix", and achieve 80% accuracy. The problem with numbers is that if you get confused, you can jeopardize a driving under the influence case. So follow the dictates of number 9 below.

Be sure the officer is aware that NHTSA has done validation studies, and the SFST is considered very useful in determining whether or not a defendant is driving while intoxicated. The officer doesn't have to know the numbers, or care, because in *this* case, *this* defendant was impaired.

9. With a proper Motion In Limine from the prosecutor, you can testify only as to the observations you make on the field sobriety evaluations. You would therefore not testify about the numbers of clues or whether the defendant passed or failed any tests. Thus, you would ignore the advice given in numbers seven and eight above. It is very important that you discuss this option with the prosecutor in advance of trial. This avoids the NHTSA requirements of passing or failing a test based on the number of clues. You would only testify as to what you observed regarding the defendant's manifestations of intoxication and performance of the field sobriety evaluations.

Police Witnesses

Although police officers and other professionals peripherally involved with the criminal justice system should be by nature more cooperative and competent as witnesses, it is not wise to assume too much, particularly if you haven't had that person as a witness on prior occasions. Leave nothing to chance. It is safer to prepare these witnesses as any other civilian witness. Accomplish this by always being mindful of the same considerations listed above and cover everything, even the basics. Some frequently encountered pitfalls with these kinds of witnesses include: a) relying too much on notes and reports; b) arguing with defense counsel; c) appearing to be too invested in obtaining a conviction; d) offering unsolicited and improper conclusions and opinion testimony; e) being non-responsive to the point of adding gratuitous comments; f) using too much law enforcement jargon; g) being overly defensive when in error; h) relying on too much "we" type of testimony instead of telling what they did themselves, or testifying to what they usually do as opposed to what they actually did in this case.

SAMPLE DWI INCIDENT REPORT

Defendant: Eryn Greenfield
Age: 31
Date of Birth: 10/03/70
Date of Arrest: XX-XX-XX
Time of Arrest: 9:20 pm
CA - D.L. #: CA 1234567

First Observations:

On XX-XX-XX at approximately 9:00 p.m., I was patrolling westbound on Reed Avenue at the intersection with Interstate-80 (fully marked CHP patrol vehicle #904534). I was stopped at the intersection preparing to make a left turn onto eastbound I-80. I observed a yellow Volkswagon (S/V) traveling down the eastbound I-80 exit ramp approaching the intersection with Reed Avenue. I noticed the S/V traveling with no headlights. Furthermore, I noticed the right tires of the S/V travel over the solid white fog line on the exit ramp by approximately 2 feet. The S/V made a brief stop at the intersection, then made a right turn onto eastbound Reed Avenue. I made a U-turn and followed the S/V. The S/V then made a wide right turn from Reed Avenue onto southbound Riverpoint Drive. An enforcement stop was initiated at which point the S/V began to pull to the right. At the point the right front tire of the S/V rubbed up onto the raised concrete curb that paralleled the roadway.

Observations After The Stop:

I approached the S/V on the passenger side and made contact with the driver (convertible-top down). I immediately noticed that the driver had red and watery eyes. I advised her of the reason for the stop and asked if her vehicle had any mechanical problems. She stated, "no." I requested her driver's license, registration, and insurance. The driver removed a stack of cards from her wallet, which was located in her purse on right front passenger seat. She began sifting through the stack of cards. I observed her clearly pass by her license and continue searching through the cards. Unable to locate her license on the first attempt, she started over at the top and located the license on the second attempt. She was identified as Eryn Greenfield by California driver's license (#CA1234567). After handing me the license, she did not make an attempt to retrieve the other documents I had requested. I asked her again for the registration and insurance cards. She then retrieved them out of the glove compartment. I asked her how much alcohol she had consumed and she stated "a couple of beers about an hour ago." I asked her what size and type of beer and she replied with 12oz. bottles of Heineken. I asked her if she felt the effects of the drinks and she stated, "No, I feel fine." As she spoke, I noticed that her speech was slurred. I asked her to exit the vehicle and step to the side walk so I could administer several field sobriety tests to her (see field sobriety test section). As she exited the vehicle, she stepped around the front as instructed, then stumbled on the raised curb. I asked her several pre-field sobriety test questions of which she answered accordingly (see page 2 of face page). As I communicated with her, I smelled an odor of alcoholic beverage emitting from her breath.

Field Sobriety Tests:

This evaluation was performed on Riverpoint Drive, just south of Reed Avenue. The evaluation surface was smooth concrete. Lighting conditions consisted of patrol vehicle headlights, spotlights, overhead lights, streetlight, and my flashlight. No surface defects were noted or claimed.

Horizontal Gaze Nystagmus (explained):

I observed lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation, and an onset of nystagmus prior to 45 degrees in both of Greenfield's eyes.

Walk and Turn (explained and demonstrated):

Instruction Stage: Lost balance (feet broke apart)

Walking Stage (1st Nine): Walked 10 steps (counted 10).

Raised left arm over 6 inches away from body to assist with balance (at steps 4-5).

Walking Stage (2nd Nine): Walked 10 steps (counted 9).

Raised left arm over 6 inches away from body to assist with balance (at steps 6-7).

Turn: Lost balance during turn.

One Leg Stand (explained and demonstrated):

Greenfield raised her left leg and began counting. She put her foot down on counts 1006 and 1009. As she was counting, she skipped 1017 (counting from 1016 to 1018). Used right arm for balance (6+ inches from body). She counted to 1019 after 30 seconds.

Arrest:

Based on the following information, I formed the opinion that Greenfield was driving under the influence of an alcoholic beverage:

- Driving at night with no headlights.
- Driving to the right of the solid white fog line on exit ramp.
- Making wide right turn from eastbound Reed Avenue to southbound Riverpoint Drive.
- Right tire rubbing against raised concrete curb after stop was initiated.
- My observed divided attention problems while retrieving her license/registration and insurance.
- Her red, watery eyes, and slurred speech.
- Her admissions to consuming alcoholic beverages.

- Stumbling over curb after exiting the vehicle.
- Odor of alcoholic beverage emitting from her breath.
- My observed signs of impairment as she performed the field sobriety tests.

I arrested Greenfield for driving under the influence of an alcoholic beverage at 9:20 p.m. Greenfield was given the proper chemical testing advisement. She chose a breath test and was transported to the breath testing facility. She provided two breath samples of 0.10 and 0.10 at 9:50 p.m. and 9:52 p.m. She was then booked along with her property.

Recommendations:

I recommend a copy of this report be forwarded to the district attorney's office for review and prosecution of Greenfield for driving under the influence and driving with a blood alcohol concentration at or above the legal state limit.

Vehicle Disposition:

Greenfield's vehicle was stored by Reliable Towing.

One Hour and Thirty Minutes

SESSION XIII
REPORT WRITING EXERCISE
AND MOOT COURT

SESSION XIII

REPORT WRITING EXERCISE AND MOOT COURT

Upon successfully completing this session, the student will be able to:

- o Discuss the required information on a narrative arrest report.
- o Successfully complete a narrative arrest report.
- o Discuss the need for competent courtroom testimony.
- o Demonstrate the proper techniques of courtroom testimony.

CONTENT SEGMENTS

- A. Procedures
- B. Report Writing Exercise
- C. Courtroom Testimony Exercise

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Video Presentation
- o Writing Skills Exercise
- o Student's Courtroom Testimony Exercise
- o Instructor-Led Discussion



Display Slide XIII-O (Session Objectives)

Aides

Lesson Plan

Instructor Notes



90 Minutes



10 Minutes



Display
Overhead
XIII-1

XIII REPORT WRITING EXERCISE AND MOOT COURT

A. Procedures

1. Report writing exercise consists of two sections.
 - a. The first section employs a video segment to simulate the first two phases of DWI Detection.
 - o Class will view the video segment.
 - o Video segment begins with initial observation of a vehicle in operation, proceeds through the stop command and the observation of the stop, continues through the face-to-face interview with the driver, and ends with the observation of the driver's exit from the vehicle.
 - b. Following the video segment, students will have 10 minutes to make notes and complete a narrative arrest report based on what was seen and heard in the video segment.

Selectively reveal only the first major element of the slide.

Point out that the video segment used for the report writing exercise is somewhat longer than the video segments viewed in previous modules because this segment also includes the exit decision and observation of the exit.

Emphasize that the standardized note taking guide/narrative arrest report form is to be used to record all evidence depicted in the video.

Aides

Lesson Plan

Instructor Notes

	<ul style="list-style-type: none">o The report will include all the evidence portrayed in the video segment. o Report will be collected following the courtroom testimony exercise for grading by instructors. <p>2. The Moot Court Exercise.</p> <ul style="list-style-type: none">a. This exercise involves a moot court situation in which students are required to "testify" in a DWI trial based on information included in the narrative arrest report they had prepared in the report writing exercise. <ul style="list-style-type: none">o The classroom will be arranged in a typical court room setting. o Two students will be selected by the instructor as patrol partners in a DWI case. They will be required to take the stand separately and testify from the facts listed on their completed narrative arrest reports.	<p>Instruct the students that in this exercise the suspect refused to take the standardized field sobriety tests or a chemical test. They are to end their narrative report at the completion of the driver's exit.</p> <p>NOTE: This is optional.</p> <p>Reveal the second major element of Slide XIII-1.</p> <p>Point out that in this exercise, students will be required to appear in a realistic court situation, take the stand, and testify before a jury about their observations of the defendant at the time of the traffic stop.</p> <p>Re-emphasize the importance of a complete arrest report when testifying in court.</p>
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Aides

Lesson Plan

Instructor Notes

- o After both "officers" have testified, the remainder of the class will be asked for comments as to the testimony given.
- o The video segment will be replayed in its entirety to the class.
- o Class members will again be asked for their comments.
- o Instructor critique.

3. The report writing exercise will begin in a few moments.

- a. The video segment will be shown.
- b. Students will compile notes, using the standard note taking guide.
- c. Students will prepare their own narrative arrest reports.

4. Distribution of standardized note taking guide/narrative arrest report forms.

B. Report Writing Exercise

- 1. Impaired Driver video segment (Segment Four, Tape Two). (This is a combination of video segment Number Four, Phase One, and video segments One and Two, Phase Two, Tape One.)

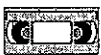
Solicit students' questions concerning the report writing exercise procedures.

Hand out sufficient copies of the standard note taking guide and narrative arrest report forms.

Show the combination Impaired Driver video segment. While this video segment is being shown students may fill out note taking guides.



40 Minutes



Aides

Lesson Plan

Instructor Notes



**Display
Overhead
XIII-2**



40 Minutes

2. Completion of narrative arrest reports.
3. Instruct students that in this case the suspect refused the chemical test and to end their report at the completion of the driver's exit from vehicle.
4. When reports have been completed students will take a break. When they return, they will be prepared to take the stand and testify in "The Impatient Driver" DWI case.

C. Moot Court Exercise

1. The purpose of this exercise is to have the students demonstrate their ability to testify in a logical sequence to the evidence they collected during the two phases of DWI Detection with "The Impatient Driver".
2. A student judge will be appointed to preside over the case and two students will be selected as arresting officers and sequestered until they are called to testify. The remainder of the students will serve as members of the jury. Two instructors will serve as prosecutor and defense counsel.

Reference back to Sessions V and VI for appropriate clues.

Allow 10 minutes for the students to complete their reports individually.

Point out that the sample report used in Session XII may be used as a guide in this exercise.

During the break following this segment, arrange the classroom in the moot court setting.

Choose the two students who will testify as "arresting officers".

When the two students are chosen as "arresting officers" have them move to another room where they cannot hear or see what is happening in the court room.

Aides

Lesson Plan

Instructor Notes

3. The judge will call the court to order, the case will be announced and the prosecutor and defense counsel will give their opening statements.

4. The first officer will be called to testify.

5. The second officer will be called to testify.

6. Prosecutor and defense counsel will give closing statements.

7. Judge will direct jury to render a verdict.

8. Discussion

9. (Optional)

One instructor shall give instructions to the jury. Have judge and jury move into their appropriate positions.

The officers should only testify to what they actually observed. They may refer to their written reports if necessary. When one "arresting officer" testifies, the other will remain sequestered.

Have the jury render a verdict with a show of hands.

Solicit students comments as to the testimony of the two arresting officers.

The Impaired Driver video segments may be reshown if time permits.



Two Hours

SESSION XIV

"TESTING SUBJECTS" PRACTICE: SECOND SESSION

SESSION XIV

"TESTING SUBJECTS" PRACTICE: SECOND SESSION

Upon successfully completing this session, the student will be able to:

- o Properly administer the SFST's.
- o Properly observe and record subject's performance utilizing the standard notetaking guide.
- o Properly interpret the subject's performance.

CONTENT SEGMENTS

- A. Procedures
- B. Hands-on Practice
- C. Session Wrap-Up

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Student Practice Session
- o Instructor-Led Discussion



Display Slide XIV-O (Session Objectives)

Aides

Lesson Plan

Instructor Notes



2 Hours



5 Minutes

XIV "TESTING SUBJECTS"
PRACTICE: SECOND
SESSION

A. Procedures

1. Students work in the same teams that were constituted for the Dry Run Practice Session.
2. Each team will test at least as many drinking volunteers as the team has members.
3. Each team member will administer one complete series of tests to at least one drinking volunteer.
4. If time permits, teams will test additional volunteers.
5. While one student is administering tests to a volunteer, the other team members will observe and record the volunteer's performance.
6. As soon as the team has completed the SFSTs on a particular volunteer, the volunteer must be escorted by a monitor to the next scheduled team.
7. Upon termination of practice, monitors will escort the volunteer subject to the Breath Testing Station.

NOTE: Guidelines for Achieving BACs - See Section E, "Guidelines for Controlled Drinking Practice Session " in Administrator's Guide pages 12-14.

Make sure that all students understand the practice procedures.

Example: If a team has four members, that team will administer a complete set of tests to at least four volunteers.

Emphasize that each team member is to prepare a descriptive, written test record on each volunteer tested (using the standard note-taking guide).

Define the sequence in which volunteers will circulate among teams.

Emphasize that teams will not be informed of the volunteers' BACs until the session "Wrap-Up".

Aides

Lesson Plan

Instructor Notes



90 Minutes

B. Hands-on Practice

Students carry out the "drinking subjects" practice procedures.

Instructors circulate among teams to observe and coach students' performance, as necessary.

Upon completion of practice, teams escort volunteers to the Breath Testing Station.

Teams return to classroom to complete report writing assignment. An instructor records the BACs of the volunteer.



25 Minutes

C. Session Wrap-Up

1. Officers report their observations of volunteers. Remind students to continue using their SFST Field Arrest Log.
2. Instructors notify students of volunteers' BACs.

Solicit officer's SFST results on each volunteer. Record results on chalkboard (See sample chalkboard array on next page).

Instructor notifies students of volunteers' BACs, as obtained during the breath tests.

Write BACs next to volunteers' names or code letters on the chalkboard.

Solicit students' comments, questions or observations concerning the relationship between volunteers' BACs and their performances on the tests.



SAMPLE CHALKBOARD ARRAY FOR
TABULATING RESULTS

<u>"Designated Suspects"</u>	<u>Horizontal Gaze Nystagmus</u>	<u>Walk And Turn</u>	<u>One-Leg Stand</u>	<u>Arrest ?</u>
"A"	_____	_____	_____	_____
"B"	_____	_____	_____	_____
"C"	_____	_____	_____	_____
"D"	_____	_____	_____	_____
"E"	_____	_____	_____	_____
"F"	_____	_____	_____	_____
"G"	_____	_____	_____	_____
"H"	_____	_____	_____	_____
"I"	_____	_____	_____	_____
"J"	_____	_____	_____	_____

Two Hours

SESSION XIV-A

"TESTING SUBJECTS" PRACTICE: SECOND SESSION
(OPTION TWO ONLY)

SESSION XIV-A

"TESTING SUBJECTS" PRACTICE: SECOND SESSION
(OPTION TWO ONLY)

Upon successfully completing this session, the student will be able to:

- o Properly administer the SFST's.
- o Properly observe and record subject's performance utilizing the standard notetaking guide.
- o Properly interpret the subject's performance.

CONTENT SEGMENTS

- A. Procedures
- B. Practical Exercise (OPTION TWO ONLY)
- C. Session Wrap-Up

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Video Presentations
- o Instructor-Led Discussion



Display Slide XIV-A-O (Session Objectives)

Aides

Lesson Plan

Instructor Notes



2 Hours



5 Minutes

**XIV-A "TESTING SUBJECTS"
PRACTICE: SECOND
SESSION (OPTION TWO
ONLY)**

A. Procedures

1. Students work in the same teams that were assigned for the Dry Run Practice Session.
2. Distribute video score sheets, have students fill in their name and team number.
 - a. Advise students that each subject will be viewed performing all three tests. Pauses are provided between each test to allow students time to record observed clues.
 - b. Advise students that when viewing the administration of HGN (in the check for angle of onset) they will be provided two views. The first will show the stimulus in relation to the subject's shoulder at onset. The second view will be a close-up of the eye captured in that position.

Make sure that all students understand the practice procedures.

NOTE: Have sufficient copies of handout XIV-A1 available. (Minimum of six copies per student.)

NOTE: Point out that students will have only one chance to view each subject. Review can be conducted after the "wrap-up".

Students shall record the number of clues observed, in the boxes located opposite each test.

Aides

Lesson Plan

Instructor Notes



90 Minutes

c. Advise students that two views of the subject performing the walk and turn are also provided. The first is an overall view of both stages. The second is a close up of the subject's feet while walking.

B. Practical Exercise

1. Divide class into two groups.
2. It is recommended that half the class perform the SFSTs under the direction of instructor while the remainder of the class views, records and interprets the NHTSA/IACP approved video tapes for this session. Once completed, the groups switch roles.
3. If time permits, students will administer additional tests to each other.

C. Session Wrap-Up

1. Officers report their observations of video-taped subjects. Remind students it is mandatory they use the SFST Field Arrest Log.

Each team member will administer a complete SFST battery on another student under the direct supervision of an instructor.

EACH team member must determine if the subject should or should not be arrested.

Emphasize that each officer is to prepare a descriptive, written test record on each video taped subject, using the standard notetaking guide.

Emphasize that teams will not be informed of the volunteers' BACs until the session "Wrap-Up".

Solicit officer's SFST results on each video-taped subject. Record results on chalkboard (See sample chalkboard array on next page).



25 Minutes

Aides

Lesson Plan

Instructor Notes



2. Instructors notify students of video-taped subjects' BACs.

Instructor notifies students of video-taped subjects' BACs.

Write BACs next to video-taped subjects' names or code letters on the chalkboard.

Solicit students' comments, questions or observations concerning the relationship between video-taped subjects' BACs and their performances on the tests.

SAMPLE CHALKBOARD ARRAY FOR
TABULATING RESULTS

<u>"Designated Suspects"</u>	<u>Horizontal Gaze Nystagmus</u>	<u>Walk And Turn</u>	<u>One-Leg Stand</u>	<u>Arrest ?</u>
"A"	_____	_____	_____	_____
"B"	_____	_____	_____	_____
"C"	_____	_____	_____	_____
"D"	_____	_____	_____	_____
"E"	_____	_____	_____	_____
"F"	_____	_____	_____	_____
"G"	_____	_____	_____	_____
"H"	_____	_____	_____	_____
"I"	_____	_____	_____	_____
"J"	_____	_____	_____	_____

One Hour and Fifty Minutes

SESSION XV
REVIEW AND PROFICIENCY EXAMINATIONS

SESSION XV

REVIEW AND PROFICIENCY EXAMINATIONS

Upon successfully completing this session, the student will be able to:

- o Demonstrate knowledge and proficiency in administering the Standardized Field Sobriety Test battery.

CONTENT SEGMENTS

- A. Review of Horizontal Gaze Nystagmus
- B. Review of Walk-and-Turn
- C. Review of One-Leg Stand
- D. Video Tape Demonstration
- E. Proficiency Exam

LEARNING ACTIVITIES

- o Instructor-Led Presentation
- o Instructor- and Student-Led Demonstrations
- o Video Tape Demonstration
- o Student Proficiency Examination



Display Slide XV-O (Session Objectives)



110 Minutes



15 Minutes



Display
Overhead XV-
1



Display
Overhead XV-
2



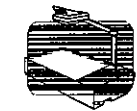
Display
Overhead XV-
3

XV REVIEW AND EXAMINATIONS

A. Review of Horizontal Gaze Nystagmus

1. Involuntary jerking of the eyes, occurs as the eyes gaze to the side.
 - a. The subject is generally unaware of the nystagmus.
 - b. Nystagmus is caused by alcohol and/or other drugs and some medical conditions.
2. Review pupil size, resting nystagmus, and equal tracking.
3. Three specific clues of Horizontal Gaze Nystagmus.
 - a. Look for these clues in each eye.
 - o Lack of smooth pursuit,
 - o Distinct and sustained nystagmus at maximum deviation,
 - o Onset of nystagmus prior to 45 degrees.
4. Clue No. 1: Lack of Smooth Pursuit.

Select a student to serve as a demonstration subject.



Display
Overhead XV-
4

- | Aides | Lesson Plan | Instructor Notes |
|-------|--|--|
| | <ul style="list-style-type: none"> a. Position stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose, slightly above eye level. b. Start with the left eye. c. Move the stimulus smoothly all the way to the right side (checking subject's left eye) then all the way to the left side (across subject's nose) to the left side (checking subject's right eye). d. Observe eyes for signs of nystagmus as they move side-to-side. | <p>Demonstrate initial positioning of object.</p> <p>Demonstrate.</p> <p>Make at least two complete passes.</p> |
| | <p>5. Clue No. 2: Distinct and Sustained Nystagmus at Maximum Deviation.</p> <ul style="list-style-type: none"> a. Move the stimulus to the right until the subject's left eye reaches maximum deviation. b. Verify that no white is showing in the corner of the eye. c. Hold the stimulus steady for a minimum of four seconds, and watch for distinct and sustained nystagmus. d. Repeat for right eye. | <p>Select another student to serve as a demonstration subject.</p> <p>Demonstrate</p> <p>Remind students that the nystagmus must be distinct. Very slight nystagmus at maximum deviation is common among some unimpaired people.</p> <p>Remind students to conduct a second pass the same as the first.</p> <p>Check each eye twice for each clue.</p> |

Aides

Lesson Plan

Instructor Notes



Display
Overhead XV-
5

6. Clue No. 3: Onset of Nystagmus prior to 45 Degrees.

- a. Position stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose, slightly above eye level.
- b. Begin to make a slow pass in front of the left eye.
- c. When you see nystagmus, stop the stimulus.
- d. Hold the stimulus steady and verify that the nystagmus continues.
- e. Verify that there is still some white showing in the corner of the eye.
- f. Check the alignment of the object with the subject's shoulder.
- g. Repeat for right eye.

Select another student to serve as a demonstration subject.

Demonstrate.

Demonstrate.

Demonstrate.

Remind students that in most individuals there will be some white showing in the corner of the eye at 45 degrees.

Remind students to conduct a second pass the same as the first.

Check each eye twice for each clue.



Display
Overhead XV-
6

7. Nystagmus Administrative Procedures.

- a. Step I: Check for Eyeglasses.
- b. Step II: Verbal Instructions.
 - o Feet together, hands at sides

Aides

Lesson Plan

Instructor Notes



**Display
Overhead XV-
7**

- o Head still
- o Look at stimulus
- o Follow movement with eyes

- c. Step III: Positioning the Stimulus.

- d. Step IV: Pupil Size and Resting Nystagmus.

- e. Step V: Check for Tracking.

- f. Step VI: Check for Lack of Smooth Pursuit.

- g. Step VII: Check for Distinct and Sustained Nystagmus.

- h. Step VIII: Check for Onset of Nystagmus Prior to 45 Degrees.

- i. Step IX: Total the clues.

- j. Step X: Check for vertical nystagmus.

- 8. Test Interpretation.
 - a. Maximum possible number of clues is 6.
 - b. Test criterion is 4 or more.
 - c. Test is 77% accurate.

- 9. Student-Led Demonstration.

Remind students that vertical nystagmus was not included in SFST battery during the original research. However, it is a reliable indicator of impairment by certain other drugs, as well as high doses of alcohol for that individual.

Based on the original research.


Choose a student to serve as the test administrator.

Choose another student to serve as a subject.

Aides

Lesson Plan

Instructor Notes


10 Minutes

Display
Overhead XV-
8

- a. Test Administration.
 - o Verbal instructions.
 - o Initial positioning of stimulus.
 - o Check for each clue.
 - o Estimate a 45 degree angle.

b. Critique

B. Review of Walk-and-Turn

- 1. Two stage test.
 - a. Instructions stage.
 - b. Walking stage.
- 2. Instructions Stage Positioning.
 - a. Place left foot on line.
 - b. Place right foot ahead of left, heel of right foot against toe of left foot.
 - c. Arms at the sides.
 - d. Hold position until told to start.

Have student-administrator conduct a complete test of the student-subject's eyes.

Instruct student-administrator to articulate each step in the testing procedure.

At completion of test, have student-administrator estimate a 45 degree angle.

Comment on, and solicit other students' comments on, student-administrator's performance.

Demonstrate positioning for the instructions stage.

Remind students that it is important that suspect indicates understanding of verbal direction not to move until told to do so.

Aides

Lesson Plan

Instructor Notes



Display
Overhead XV-9



Display
Overhead XV-10



Display
Overhead XV-11



10 Minutes

3. Walk-and-Turn Administrative Procedures.

- a. Initial verbal instructions (instructions stage).
- b. Basic test requirements (nine steps, turn, nine steps).
- c. Specific turn procedures (front foot on line, series of small steps with other foot).
- d. Final verbal instructions.

4. Test Interpretation.

- a. Eight specific clues of impairment.
- b. Test criterion is 2 or more.

c. Test is 68% accurate.

5. Student-Led Demonstration.

- a. Test Administration.
 - o Instructions positioning.
 - o Verbal instructions.
 - o Turn demonstration.
- b. Critique.

C. Review of One-Leg Stand

Choose a student to serve as the test administrator.

Choose another student to serve as the test subject.

Based on the original research.

Have student administrator initiate the test of the subject.

Terminate the test after the subject has taken two or three steps.

Comment on, and solicit other students' comments on student-administrator's performance.

Aides**Lesson Plan****Instructor Notes**

Display
Overhead XV-
12



Display
Overhead XV-
13A



Display
Overhead XV-
13B

1. Two stage test.
 - a. Instructions stage.
 - b. Balance and Counting stage.

2. Instructions stage positioning.
 - a. Feet together.
 - b. Arms at the side.
 - c. Hold position until told to begin.

3. Administrative Procedures.
 - a. Simple verbal instructions.
 - o Raise one leg, either leg.
 - o With the foot approximately six inches (15 cm) off the ground, keeping your raised foot parallel to the ground.
 - o Keep both legs straight.
 - o Look at elevated foot.
 - o Count out loud in the following manner: "one thousand and one, one thousand and two, one thousand and three, and so on," until told to stop.
 - b. Simple physical demonstrations.
 - o Demonstrate one-leg stand.
 - o Demonstrate counting.

Demonstrate positioning for the instructions stage.

Demonstrate the administrative procedures.

Demonstrate count: one thousand and one; one thousand and two; one thousand and three, etc.

Aides

Lesson Plan

Instructor Notes



Display
Overhead XV-
14



Display
Overhead XV-
15



15 Minutes



50 Minutes

4. Test Interpretation.

- a. Four specific clues of impairment.
- b. Test criterion is 2 or more.
- c. Test is 65% accurate.

5. Student-Led Demonstration.

- a. Test Administration.
 - o Instructions positioning
 - o Verbal instructions
 - o Physical demonstrations
- b. Critique.

D. Videotape Demonstrations
(Second Showing) IF TIME
PERMITS

E. Proficiency Examination.

- 1. Procedures.

Based on the original research.

Choose a student to serve as
the test administrator.

Choose another to serve as the
test subject.

Have student-administrator
initiate the test of the subject.

Terminate the test after the
subject has counted out three
or four seconds.

Comment on, and solicit other
students' comments on,
student-administrator's
performance.

Show the NHTSA video tape
called "Standardized Field
Sobriety Testing, DWI Detec-
tion, Phase Three, Segment
One of Tape One" (15 Minutes).

Solicit and answer students'
questions concerning test
administrative procedures.

Make sure all students
understand the proficiency
examination procedures.

Aides	Lesson Plan	Instructor Notes
	<ul style="list-style-type: none"> a. Each student must demonstrate the ability to administer properly the three standardized field sobriety tests. b. Horizontal Gaze Nystagmus. <ul style="list-style-type: none"> o Demonstrate ability to give proper verbal instructions. o Demonstrate ability to carry out the mechanics of testing for each clue. o Demonstrate ability to estimate a 45 degree angle. c. Walk-and-Turn. <ul style="list-style-type: none"> o Demonstrate ability to give proper verbal instructions. o Demonstrate ability to carry out appropriate physical demonstrations to support the verbal instructions. d. One-Leg Stand. <ul style="list-style-type: none"> o Demonstrate ability to give proper verbal instructions. o Demonstrate ability to carry out appropriate physical demonstrations to support the verbal instructions. <p>2. Group Assignments.</p>	<p>Inform students that each must satisfactorily administer the horizontal gaze nystagmus test to one of the fellow students.</p> <p>Inform the students that each must satisfactorily administer the Walk-and-Turn test to one of the fellow students.</p> <p>Inform the students that each must satisfactorily administer the one-leg stand test to a fellow student.</p> <p>Divide the class among the instructors.</p>

Aides**Lesson Plan****Instructor Notes**

Aides	Lesson Plan	Instructor Notes
	<p>3. Conduct Examinations.</p> <p>a. Each student conducts a complete test of Horizontal and Vertical Gaze Nystagmus.</p> <p>b. Each student administers the verbal instructions and physical demonstrations of the Walk-and-Turn test.</p> <p>c. Each student administers the verbal instructions and physical demonstrations of the One-Leg Stand test.</p> <p>4. Re-examinations (as necessary).</p>	<p>Within each group, students conduct their tests one at a time.</p> <p>While one student is conducting the tests, another student assists by serving as the test subject. Other students in the group observe the student-administrator's performance.</p> <p>Instructor critiques/comments on student-administrator's performance in conducting Horizontal Gaze Nystagmus test. (Use the performance checklist from the student manual.)</p> <p>Instructor terminates the test after the student-subject has taken two or three heel-toe steps.</p> <p>Instructor critiques/comments on student-administrator's performance in conducting Walk-and-Turn test.</p> <p>Instructor terminates the test after the student-subject has counted out three or four seconds.</p> <p>Instructor critiques/comments on student-administrator's performance in conducting One-Leg Stand test.</p> <p>Students who have failed to exhibit adequate proficiency in administering the tests will receive additional practice, and a repeat examination. This may be conducted during the lunch hour, or after regular class hours, as appropriate.</p>

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NOTE: "Adequate proficiency" for purposes of this session means the student successfully administers the entire 3-test battery at least once without missing any of the performance checklist items that are marked with an asterisk (*).

Fifty Minutes

SESSION XVI

WRITTEN EXAMINATION AND PROGRAM CONCLUSION

SESSION XVI

WRITTEN EXAMINATION AND PROGRAM CONCLUSION

Upon successfully completing this session, the student will be able to:

- o Complete a written examination with a passing grade.
- o Provide comments and suggestions for improving the course.

CONTENT SEGMENTS

- A. Post Test
- B. Critique
- C. Review of Post Test
- D. Concluding Remarks
- E. Certificates and Dismissal

LEARNING ACTIVITIES

- o Written Student Examination
- o Written Student Critique
- o Instructor-Led Presentation



Display Slide XVI-O (Session Objectives)

Aides

Lesson Plan

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50 Minutes



20 Minutes



10 Minutes



10 Minutes

XVI PROGRAM CONCLUSION

A. Post-Test

1. Purpose of Post-Test: to compare with pretest, and determine extent of knowledge gained by students.
2. Distribute Post-Tests.
3. Collect Completed Post-Tests.

NOTE: "closed book" test. Passing score is 80%.

Allow students approximately 17 minutes to complete the post-test.

Instructors grade post-test and redistribute to students for review.

B. Critique

1. Purpose of the Critique Form: to identify possible improvements that can and should be made to this program.
2. Distribute Critique Forms.
3. Collect completed critique forms.

Allow students approximately 8 minutes to complete the critique form.

C. Review of Post-Test

1. If passing score is not achieved, student(s) will be allowed to take "make-up" exam.

Read aloud each question on the Post-Test, and ask class to supply correct answer.

Correct class response, as necessary.

Explain correct answers briefly, as necessary.

Aides

Lesson Plan

Instructor Notes



5 Minutes



**Display
Overhead
XVI-1**



**Display
Overhead
XVI-2**



5 Minutes

D. Concluding Remarks

1. Overall Goal.

2. Job-Performance Objectives.

E. Certificates and Dismissal

Briefly remind students of the enormous importance of DWI deterrence.

Express the hope that the students will strive always to obtain and clearly convey all of the evidence that is present in their DWI contacts.

Hand out Certificates.

Thank the students for their time and attention.

Course Location

Date

DWI DETECTION AND STANDARDIZED FIELD SOBRIETY
TESTING TRAINING PROGRAM

STUDENT'S CRITIQUE

A. Workshop Objectives

Please indicate whether you feel that you personally achieved the following course objectives.

	<u>Yes</u>	<u>No</u>	<u>Not Sure</u>
1. Enable you to understand enforcement's role in general DWI deterrence.	---	---	---
2. Enable you to understand the detection phases.	---	---	---
3. Enable you to understand requirements for organizing and presenting testimonial and documentary evidence in DWI cases.	---	---	---
4. Improve your ability to recognize and interpret evidence of DWI violations.	---	---	---
5. Enable you to administer and interpret validated psychophysical tests to DWI suspects.	---	---	---
6. Improve your ability to describe DWI evidence clearly and convincingly in written reports and verbal testimony.	---	---	---

B. Workshop Sessions and Quality of Instruction

Please rate how helpful each workshop session was for you personally. Also, please rate the quality of instruction (subject knowledge, instructional techniques and learning activities).

Use a scale from 1 to 5 where: 5=Excellent, 4=Very Good, 3=Good, 2=Fair, 1=Poor.

	<u>Session/Activity</u>	<u>Quality</u>
Detection and General Deterrence	_____	_____
The Legal Environment	_____	_____
Overview of Detection, Note Taking & Testimony	_____	_____
Phase One: Vehicle in Motion	_____	_____
Phase Two: Personal Contact	_____	_____
Phase Three: Pre-Arrest Screening	_____	_____
Concepts and Principles of Standardized Field Sobriety Tests	_____	_____
Test Battery Demonstrations	_____	_____
"Dry Run" Practice	_____	_____
"Drinking Subjects" Practice	_____	_____
Processing the Arrested Suspect & Preparation for Trial	_____	_____
Report Writing Exercise and Moot Court	_____	_____

C. Course Design

Please circle the appropriate word to indicate your agreement or disagreement with each of the following statements.

1. The program contains some information that is not needed and that should be deleted.

Agree

Disagree

Not Sure

H. Please provide any final comments or suggestions that you feel are appropriate.

I. Please comment on the "Drugs That Impair Driving" portion of the class, if presented.
