

SESSION I
INTRODUCTION AND OVERVIEW

SESSION I: INTRODUCTION AND OVERVIEW

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

- State the goals and objectives of the training.
- Describe the training schedule and activities.
- Describe the current DWI problem.
- Identify the elements of the drug problem.
- Define and describe impaired driving enforcement programs.
- Understand the roles and responsibilities of the Drug Recognition Expert (DRE) and how this course supports the Drug Evaluation and Classification Program (DECP).
- Define the term drug in the context of traffic safety and impaired driving enforcement as referenced in the DECP.

CONTENT SEGMENTS

- A. Welcoming Remarks and Objectives
- B. Administrative Details
- C. Driving Under the Influence
- D. Impaired Driving Enforcement System
- E. DWI Detection and Standardized Field Sobriety Testing Program
- F. Drugs and Highway Safety

I. INTRODUCTION AND OVERVIEW

A. Welcoming Remarks and Objectives

Welcome to the DWI Detection and Standardized Field Sobriety Testing Refresher Training Program.

Instructor Introductions

- Principal instructor (name, relevant background, etc.)
- Instructor aides and other relevant individuals (names, assignments, etc.)

Session Objectives

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Ultimate Goal

Increase DWI deterrence and decrease alcohol-related crashes, deaths, and injuries.

Overview of the DWI Problem

- In 2006, 13,470 people were killed in alcohol-impaired crashes.
- These fatalities accounted for 32 percent of the total motor vehicle traffic fatalities in the United States.
- The 13,470 fatalities represent an average of one alcohol-impaired-driving fatality every 39 minutes.

B. Administrative Details

- Training schedule (breaks, etc.)
- Facilities (rest rooms, lunchroom, etc.)
- Logistics (travel vouchers, etc.)
- Refer to Glossary Located At End of Session I

C. Driving Under the Influence

Understand the magnitude of the problem of subjects driving while impaired by drugs and alcohol.

The National Survey on Drug Use and Health report provides a thorough overview of drug and alcohol use in the general population. The survey tells us:

- Males are twice as likely as females to drive under the influence of alcohol.
- Overall, 13.6% or more than 32 million people reported that they had driven at least once in the last year under the influence of alcohol.
- That further translated into approximately 30% of minors (16-20 years of age) and 29% of those between the ages of 21 and 25 years.
- 5% (11m) of people reported that they drove under the influence of illicit drugs during the last year.

D. Impaired Driving Enforcement System

NHTSA and IACP support:

- Training
- Enforcement
- Prosecution
- Adjudication

What NHTSA/IACP Supports:

Selective Traffic Enforcement Program (STEP) Grants, Crackdown support, Traffic Safety Resource Prosecutors (TSRP), Saturation Patrols, Sobriety Checkpoints, and Judicial Education.

One of the most critical support activities NHTSA/IACP provides is **TRAINING**.

Some examples of law enforcement and justice professional training that NHTSA/IACP provides and supports is:

- Standardized Field Sobriety Testing
- Advanced Roadside Impaired Driving Enforcement (ARIDE)
- Drug Evaluation and Classification program
- Drug Impairment Training for Education Professionals
- Prosecuting the Drugged Driver
- Lethal Weapon
- Protecting Lives, Saving Futures

The Standardized Field Sobriety Testing (SFST) Practitioner course provides:

- The cornerstone for a system of impaired driving detection training and enforcement.
- Proficiency in the SFST skills provides a foundation for ARIDE and the Drug Evaluation and Classification (DEC) program.
- The SFST program should be part of all alcohol and drug impaired driving enforcement initiatives.

E. DWI Detection and Standardized Field Sobriety Testing Program

The DWI detection process includes three phases:

1. Vehicle in motion
2. Personal contact
3. Pre-arrest screening

Throughout this training we will be discussing concepts related to these three phases.

The SFST Battery is a set of tests that include the following:

- Horizontal Gaze Nystagmus
- Walk-and-Turn
- One-Leg Stand

These tests are designed:

- To be administered and evaluated in a standardized manner to obtain validated indicators of impairment based on NHTSA/IACP supported research.

The SFST test battery serves as the foundation for impaired driving enforcement. It is critical that these tests be performed and interpreted properly.

F. Drugs and Highway Safety

Many law enforcement officers are trained in Standardized Field Sobriety Testing (SFST) and use the skills gained in the course as part of their overall enforcement of DWI laws.

Alcohol and Drug Use

Social drinking is considered acceptable in many societies.

It is important to understand the use of alcohol in the context of society, since it is related to the enforcement and adjudication of DWI offenses.

- 119 million (50.1%) people consider themselves drinkers
- 14% of this group describe themselves as heavy drinkers.
- 19.5 million people or 8.2% of the population have used illicit drugs in the past month.

Although these statistics are significant, it is reasonable to assume that the problem is even larger when you consider legal or prescription drugs used in a manner other than for what they have been prescribed or produced.

When we look at drug use specifically, it is helpful to see the trends based on specific types of drugs.

The following summarizes the usage information as reported by the NSDUH Survey 2003:

- 14.6 million people consider themselves current marijuana users
- 54.2% only use marijuana
- 20.6% use marijuana in combination with other drugs
- 75% of current illicit drug users also use marijuana.

NSDUH provides additional details on drugs used in a manner other than prescription:

<u>Type</u>	<u>Number of Users</u>
Cocaine	2.3 Million
Hallucinogens	1.0 Million
Psychotherapeutics	6.3 Million
Pain Relievers	4.7 Million
Tranquilizers	1.8 Million
Stimulants	1.2 Million
Sedatives	.3 Million

The ARIDE Course

The ARIDE course was designed with a dual purpose:

The ARIDE program will allow the participant to build on the knowledge gained through their training and experience related to the SFSTs.

- Many law enforcement officers have encountered subjects who appear to be impaired by a substance other than alcohol, or seem to be displaying signs and symptoms which are inconsistent with their BAC test results.
- This course will provide additional information which can assist the officer in effective observation and interview techniques related to driving while impaired by alcohol, drugs, or a combination of both, and make an informed decision to arrest or not arrest a subject for impaired driving.

This sums up the responsibilities and duties of the ARIDE trained officer at the conclusion of this training course.

- This course will deliver knowledge and information that will help them better assess impaired drivers at roadside.
- This training and subsequent field experience will demonstrate the value of having a DRE on staff in an agency and may serve as motivation for the individual officers to attend a DEC course in the future.

A subsequent result of this course will facilitate better utilization of DREs in the field.

The desired outcome of the training is:

- The participant will better understand the role of the DRE and will be able to use their expertise more effectively.
- For those communities with no DREs or limited access to their services, this course will help officers make informed decisions related to testing, documentation, and reporting.

This course is intended to bridge the gap between the SFST and DRE course and to provide a level of awareness to the participants, both law enforcement and other criminal justice professionals, in the area of drug impairment in the context of traffic safety.

Based on that premise, the ARIDE course was developed with the following goals in mind.

Segment Goal

The ARIDE course will train law enforcement officers to observe, identify, and articulate the signs of impairment related to drugs, alcohol or a combination of both in order to reduce the number of impaired driving incidents, serious injury, and fatal crashes.

Often times officers come in contact with the drug impaired driver.

There are many things that could be happening:

- The officer is unfamiliar with the indicators of drug impairment, therefore does nothing with the subject.
- Recognizes there is something wrong with the driver, but does not know how to address the issue.
- Allows subject to continue on their way.
- Drives the subject home or allows the subject to ride home with another individual.
- Not familiar with the resources available to them.

Drug Evaluation and Classification

The ultimate goal of the DEC program is to help prevent crashes and avoid deaths and injuries by improving enforcement of drug impaired driving violations.

The DRE officer is trained to conduct a detailed evaluation, consisting of twelve steps (12), and obtain other evidence that can be articulated as an opinion.

A participant who successfully completes all phases of the DEC program is known as a DRE.

They can reach reasonably accurate conclusions concerning the category or categories of drug(s), or medical conditions causing the impairment observed in the subject.

Based on these informed conclusions, the DRE officer can request the collection and analysis of an appropriate biological sample (blood, urine, or saliva) to obtain corroborative, scientific evidence of the subject's drug use.

The progression between each of the impaired driving enforcement programs is:

- The foundation is SFST
- The intermediate level is ARIDE
- The final stage is the DEC program

Roles and Responsibilities of a Drug Recognition Expert

To obtain a DRE Certification the law enforcement officer must complete:

- 72 hours of classroom training
- Field certifications
- Comprehensive final knowledge examination

In order to retain their certification, the DRE must:

- Participate in continuing education courses.
- Complete a recertification training course every two years.
- Maintain a log of all evaluations completed in training and as part of any enforcement activities.
- Meet other administrative requirements as established in the International Association of Chiefs of Police (IACP) International Standards governing the DEC program.

The State DEC program state coordinators may place other standards on each DRE that is specific to that state.

Drug Impairment Training for Education Professionals

The purpose of the DITEP training is to provide school administrators, teachers, and nurses with a systematic approach to recognizing and evaluating subjects in the academic environment who are using, abusing, and/or impaired by drugs, in order to provide early intervention.

This training is not intended to qualify participants as DREs, but is intended to aid in the evaluation and documentation of those suspected of being impaired by drugs.

SESSION II

VEHICLE IN MOTION AND PERSONAL CONTACT

SESSION II: VEHICLE IN MOTION AND PERSONAL CONTACT

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

- Identify typical cues of Vehicle in Motion
- Identify typical observations made during Personal Contact.
- Describe the observed cues clearly and convincingly.
- Understand the significance of the problem of impaired motorcycle riders.
- Obtain the skills necessary to detect, arrest, and prosecute alcohol- and drug-impaired motorcyclists.

CONTENT SEGMENTS

A. Phase One: Vehicle in Motion

B. Phase Two: Personal Contact

II. VEHICLE IN MOTION AND PERSONAL CONTACT

Session Objectives

- Identify typical cues of Vehicle in Motion
- Identify typical observations made during Personal Contact.
- Describe the observed cues clearly and convincingly.
- Understand the significance of the problem of impaired motorcycle riders.
- Obtain the skills necessary to detect, arrest, and prosecute alcohol- and drug-impaired motorcyclists.

A. Phase One: Vehicle in Motion

Overview: Tasks and Decision

DWI Detection Phase One, Vehicle in Motion, consists of the initial observation of vehicular operation, the stop decision and the observation of the stop.

The initial observation of vehicular operation begins when the officer first notices the vehicle and/or the driver.

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.

Sometimes, significant evidence of alcohol influence comes to light during the stopping sequence.

In some cases, the stopping sequence might produce the first suspicion of DWI.

Initial Observations: Visual Cues of Impaired Operation (Automobiles)

Drivers impaired by alcohol and/or other drugs may respond in unexpected and dangerous ways to the stop command.

The National Highway Traffic Safety Administration sponsored research to identify the most common and reliable initial indicators of DWI.

Research identified 100 cues, each providing a high probability indication that the driver is under the influence.

The cues presented in these categories predict a driver is DWI at least 35 percent of the time.

The list was reduced to 24 cues during three field studies involving hundreds of officers and more than 12,000 enforcement stops.

Generally, the probability of DWI increases substantially when a driver exhibits more than one of the cues.

The driving behaviors are presented in four categories:

- Problems in maintaining proper lane position. [P=.50-.75]
 - Weaving
 - Weaving across lane lines
 - 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]
 - 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]
 - 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]
 - 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

Initial Observations: Visual Cues of Impaired Vehicle Operation (Motorcycles)

The National Highway Traffic Safety Administration (NHTSA) estimated that in 2005, about 27 percent of motorcycle operators involved in fatal crashes had a BAC of 0.08 or higher.

In 2005, NHTSA also estimated that 34 percent of the motorcycle operators involved in crashes had a BAC of .01 or higher.

NHTSA sponsored research to develop a set of behavioral cues to be used by law enforcement personnel to detect motorcyclists who are operating their vehicles while impaired.

8 clues best discriminate between DWI and unimpaired motorcycle operation. These cues have been labeled as:

- Excellent Predictors
- Good Predictors

The excellent cues predicted impaired motorcycle operation at least 50 percent of the time.

The good cues predicted impaired motorcycle operation at least 30 to 49 percent of the time.

Cases that involve speeding require additional clarification. Motorcyclists stopped for excessive speed are likely to be driving while impaired only about 10 percent of the time.

Excellent Predictors

- Drifting During Turn or Curve

The most common cause of single vehicle, fatal motorcycle crashes is “Failure to Negotiate Curves”.

This type of collision is usually caused by impaired balance and coordination.

If you see a motorcycle drifting during a turn or curve, do the rider a favor and pull him or her over.

- Trouble with Dismount

Parking and dismounting a motorcycle can be a useful field sobriety test.

The operator must decide on a safe place to stop the motorcycle.

The operator must then balance their weight on one foot while swinging their other foot over the seat to dismount.

Operators having problems dismounting are impaired 50 percent of the time.

- Trouble with Balance at Stop

Riders whose balance has been impaired by alcohol and/or drugs often can not maintain control of the motorcycle while stopped.

Riders may be observed noticeably shifting their weight from side to side while stopped at a red light or stop sign for any length of time.

- Turning Problems

- Unsteady during turn of curve

As a result of impairment an officer might observe a motorcycle's front wheel or handle bars wobbling as the rider attempts to maintain balance at slow speeds.

- Late Braking During Turn

An impaired motorcyclist might misjudge the speed or distance to the corner or curve, requiring an application of brakes during the maneuver.

- Improper Lean Angle During Turn

When a rider's balance or speed decision making is impaired, the rider frequently attempts to sit upright through the maneuver.

- Erratic Movement During Turn

Unsteady during a turn or curve, brake late, assumes an improper lean angle, or makes erratic movements during a turn or curve.

- Inattentive to surroundings
- Inappropriate or unusual behavior
 - Open containers
 - Dropping objects from motorcycle
 - Urinating at roadside
 - Arguing with other motorists
 - Disorderly conduct
- Weaving – involves excessive movement within a lane or across lane lines.

Good Predictors

- Erratic Movements While Traveling Straight

Motorcyclists making erratic movements or sudden corrections while attempting to ride in a straight line.

- Operating Without Lights at Night
- Recklessness
- Following Too Closely
- Running Stop Light or Sign

Failure to stop at a red light or stop sign can indicate either vigilance capabilities, or impaired judgment.

- Evasion
- Wrong Way

Typical Reinforcing Cues of the Stopping Sequence

After the command to stop is given, the alcohol impaired driver may exhibit additional important evidence of DWI.

Some of these cues are exhibited because the stop command places additional demands on the driver's ability to divide attention.

The signal to stop creates a new situation to which the driver must devote some attention. For example, emergency flashing lights, siren, etc., demand and divert the subject's attention.

Signal to stop requires the driver to turn the steering wheel, operate the brake pedal, activate the signal light, etc.

As soon as officer gives the stop command, the subject's driving task becomes more complex.

If subject is under the influence, the subject may not be able to handle this more complex driving very well.

Emphasize that turning on the patrol vehicle's emergency lights creates a simple test of the subject's driving impairment.

It is the officer's responsibility to capture and convey the additional evidence of impairment that may be exhibited during the stopping sequence.

Requires ability to recognize evidence of alcohol and/or other drug influence and to describe that evidence clearly and convincingly.

B. Phase Two: Personal Contact

DWI Detection Phase Two, Personal Contact, consists of:

- The face-to-face observation and interview of the driver while still in the vehicle.
- The decision to instruct the driver to exit the vehicle.
- The observation of the driver's exit from the vehicle.

Typical Investigation Clues of the Driver Interview

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.

Sense of Sight

Sense of Hearing

Sense of Smell

Proper face-to-face observation and interview of the subject demands two distinct but related abilities of the officer:

- Recognize the sensory evidence of alcohol and/or other drug influence.
- Describe that evidence clearly and convincingly.

Recognition and Description of Investigation Clues

The research also identified 10 post stop cues. [P > .85]

- 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

Interview/Questioning Techniques

The questions an officer asks of a subject, and the way in which they are asked, can provide simple, divided attention tasks.

Sample Divided Attention Question: ask subject to produce their driver's license and vehicle registration.

Things to watch for in the subject's response to your instruction to produce driver's license and vehicle registration:

- Forgets to produce both documents (divided attention).
- Produces inappropriate or other documents.
- Passes over the license and/or registration while searching through the wallet.
- Fumbles or drops wallet, license or registration.
- Unable to retrieve documents, using fingertips.

Variation on the request for license and registration: the interrupting or distracting question.

The interrupting or distracting question forces the subject to divide attention between the license/registration search and the new question.

Things to watch for in subject's response to the interrupting of distracting question:

- Subject ignores question, because subject is concentrating on the license/registration search.
- Subject forgets to resume search for license and registration after answering the question.
- Subject supplies incorrect answer to the question.

After obtaining the license and registration: verifying information through unusual questions.

There are probably dozens of questions which the subject should be able to answer very easily, but which might be very difficult to handle while impaired, simply because they are unusual.

Unusual questions require the subject to process information; this can be especially difficult to do when the subject doesn't expect to have to process information.

Example: subject may respond to the question about the middle name by giving first name.

In this case, subject ignores the unusual question and instead answers an unspoken usual question.

Sample tests that can be administered while the subject is still inside the vehicle.

Alphabet Recital

- Recite the alphabet, beginning with the letter E as in Edward, and stopping after the letter P as in Paul.

Count-down Tests

- Count out loud backwards, starting with the number 67 and ending at the number 54.

Finger Count Test

- 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".

Recognition and Description of Clues Associated With the Exit Sequence

The decision to instruct the subject to exit the vehicle may be based on suspicion that the subject may be impaired.

Even though that suspicion may be strong, the subject usually is not yet under arrest at this point.

How the subject exits the vehicle, and the actions and behavior of the subject during the exit sequence, may provide important additional evidence of alcohol and/or other drug influence.

Usual kinds of evidence obtained during observation of the exit sequence.

SESSION III
STANDARDIZED FIELD SOBRIETY TESTING REVIEW

SESSION III: STANDARDIZED FIELD SOBRIETY TESTING UPDATE AND REVIEW

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

- Understand the results of selected SFST validation studies.
- Define and describe the Standardized Field Sobriety Tests (SFSTs).
- Define nystagmus and distinguish between the different types.
- Describe and properly administer the three SFSTs.
- Recognize, document and articulate the indicators and clues of the three SFSTs.
- Identify the limitations of the three SFSTs.

CONTENT SEGMENTS

- A. SFST Validation Studies
- B. Overview of Selected Types of Nystagmus
- C. Standardized Field Sobriety Tests

III. STANDARDIZED FIELD SOBRIETY TESTING REVIEW

Session Objectives

- Understand the results of selected SFST validation studies.
- Define and describe the Standardized Field Sobriety Tests (SFSTs).
- Define nystagmus and distinguish between the different types.
- Describe and properly administer the three SFSTs.
- Recognize, document and articulate the indicators and clues of the three SFSTs.
- Identify the limitations of the three SFSTs.

A. Overview of the SFST Validation Studies

For many years law enforcement officers have utilized field sobriety tests to determine a subject's impairment due to alcohol.

The performance of the subject on those field sobriety tests was used by the officer to develop probable cause for arrest and as evidence in court.

This may not seem important, but officers are seeing this in court as a defense strategy.

A wide variety of field sobriety tests being used by officers throughout the country.

There was a need to develop a battery of standardized, validated tests.

SCRI conducted several research projects and published the following three reports:

1. California; 1977 (Lab)
2. California; 1981 (Lab and Field)
3. Maryland, DC, VA, NC; 1983 (Field)

The recommended battery included the following SFSTs:

- Horizontal Gaze Nystagmus (HGN)
- Walk-and-Turn (WAT)
- One-Leg Stand (OLS)

SCRI analyzed the laboratory test data and determined that:

- HGN, alone, was 77% accurate
- WAT, alone, was 68% accurate
- OLS, alone, was 65% accurate
- Combination of HGN and WAT yield an accuracy rate of 80%

Additional research studies were conducted to validate the 3-test battery.

Three SFST validation studies were:

1. Colorado (1995)
2. Florida (1997)
3. San Diego (1998)

The Colorado SFST validation study was the first full field study that utilized law enforcement personnel experienced in the administration of SFSTs.

The results of this study indicated that correct arrests decisions were made 93% of the time based on the 3-test battery (HGN, WAT, OLS)

Colorado was the first full field study that utilized law enforcement personnel experienced in the use of SFSTs.

Correct arrest decisions were made 93% of the time based on the three-test battery (HGN, WAT, OLS). Substantially higher than the initial study results.

The Florida SFST field validation study examined whether SFSTs are valid and reliable indices of the presence of alcohol when used under present day traffic and law enforcement conditions.

Florida was the first study to evaluate the 3-test battery at a 0.08 BAC.

Correct decisions to arrest were made 95% of the time based on the 3-test battery (HGN, WAT, OLS).

The San Diego SFST validation field study was undertaken because of the nationwide trend towards lowering the BAC limits to 0.08.

The research was done to investigate how well the SFSTs discriminate at BACs below 0.10. Based on the revised arrest and release criteria, the officers in the study made correct decisions 91% of the time based on the 3-test battery (HGN, WAT, OLS) at the 0.08 BAC level and above.

B. Overview of Selected Types of Nystagmus

Nystagmus

The involuntary jerking of the eyes and is normal and occurs naturally.

This nystagmus can not be seen without the aid of specialized instrumentation.

Horizontal Gaze Nystagmus is defined as the involuntary jerky of the eyes, as the eyes gaze to the side.

There are over 40 different types of nystagmus, but during this course we will focus on two types of nystagmus:

- Horizontal gaze nystagmus (HGN)
- Vertical gaze nystagmus (VGN)

The ability to recognize horizontal and vertical gaze nystagmus are important tools in impaired driving enforcement.

Alcohol and certain other drugs have been shown, through research, to cause horizontal and vertical gaze nystagmus, which is visible without the aide of specialized instrumentation.

Categories of Nystagmus

Vestibular Nystagmus

Caused by movement or action to the vestibular system that can occur when an individual is spun around and the fluid in the inner ear is disturbed or there is a change in the fluid (temperature, foreign substance, etc.).

Pathological Nystagmus

Caused by the presence of specific pathological disorder, which include brain tumors, other brain damage, or some diseases of the inner ear.

Neural Nystagmus

Caused by some disturbance to the neural system.

In this course we will only be concerned with gaze-evoked neural nystagmus.

Alcohol and/or specific types of drugs can cause the following three types of nystagmus. These examples of gaze-evoked neural nystagmus can be visible to the officer during the proper administration of the HGN and VGN tests.

Gaze Nystagmus

Horizontal Gaze Nystagmus

Defined as the involuntary jerking of the eyes as they gaze toward the side.

Although this type of nystagmus is useful in determining alcohol influence, its presence may also indicate use of CNS Depressants, Inhalants, and Dissociative Anesthetics. These are known as DID drugs.

Vertical Gaze Nystagmus

Defined as the involuntary jerking of the eyes (up and down), which occurs when the eyes gaze upward at maximum elevation.

The presence of this type of nystagmus is usually associated with a Dissociative Anesthetic, high dose of a CNS Depressant (including alcohol), or an Inhalant for a particular subject.

VGN will not be present without HGN.

If VGN is present and HGN is not, it could indicate a medical condition.

Resting Nystagmus

Defined as the involuntary jerking of the eyes as they gaze straight ahead.

This condition is not frequently seen. Its presence usually indicates a pathology or high doses of a drug such as a Dissociative Anesthetic like PCP.

If detected, take precautions. As always, exercise sound officer safety techniques and consider calling for medical aid.

C. Standardized Field Sobriety Tests

Horizontal Gaze Nystagmus

HGN may be observable when a subject is impaired by alcohol.

As the subject's BAC increases, jerking will appear sooner.

HGN is also visible when an individual is impaired by certain drugs. Examples include CNS Depressants, Inhalants, Dissociative Anesthetics.

In administering the HGN test:

- Subject must focus on stimulus

- You will need a contrasting stimulus for the subject to follow with their eyes. This can be the tip of your index finger, penlight, or pen.

Initiating the HGN Test

Ask the subject to:

1. Put their feet together,
2. Hands at their side,
3. Look straight ahead and keep head still

Begin the test by positioning the subject in a manner that is deemed safe by the officer and safe for the subject being tested.

When practical, subject should be turned away from emergency lights.

The subject should not be wearing glasses during the test.

Give the subject the following verbal instructions:

1. "I am going to check your eyes."
2. "Keep your head still and follow the stimulus with your eyes only."
3. "Keep your eyes on the stimulus until I tell you to stop."

Position the stimulus approximately 12 to 15 inches from the face in front of the subject's nose and hold it slightly above eye level.

Check both eyes for equal pupil size and resting nystagmus.

- Both pupils should be of equal size.
- If the pupils are noticeably unequal in size or there is noticeable nystagmus at rest, this could indicate a medical condition or a head injury.

Check both eyes for equal tracking.

This is done by making a horizontal pass across both eyes. The movement should go from center, across the left eye, across the face to the person's right eye, and back to center.

Both eyes should track the stimulus together. If the eyes fail to track together, discontinue the test. This could be the indication of a possible medical disorder, injury or blindness.

Administration of the HGN

Lack of Smooth Pursuit

When the eyes jerk or bounce as they follow a smoothly moving stimulus.

1. Check the subject's left eye by moving the stimulus to your right. Move the stimulus smoothly, at a speed that requires approximately two seconds to bring the subject's eye as far to the side as it can go. While moving the stimulus, look at the subject's eye and determine whether it is able to pursue smoothly.
2. Move the stimulus all the way to the left, back across subject's face checking if the right eye pursues smoothly. Movement of the stimulus should take approximately two seconds out and two seconds back for each eye.
3. Repeat the procedure.

The stimulus should be moved in a smooth manner to best observe the eyes in motion.

The two-second timing is provided based on how the eye should follow the stimulus if the individual is not impaired by alcohol and/or other drugs.

Distinct and Sustained Nystagmus at Maximum Deviation

At extreme lateral gaze, also known as the endpoint or maximum deviation, the nystagmus is obvious and sustained when the stimulus is held for a minimum of 4 seconds.

1. Start again with the subject's left eye.
2. Move the stimulus to the subject's left side until there is no more white of the eye visible.
3. The eye should not be able to move any further on the horizontal plane.
4. Hold the left eye in that position for a minimum of four (4) seconds.
5. Observe the eye for distinct and sustained nystagmus while being held in this position.
6. Move the stimulus all the way to the left, back across the subject's face and check the right eye.
7. Repeat the procedure until each eye has been checked twice.

Onset of Nystagmus Prior to 45 Degrees

1. Start again with the subject's left eye
2. Move the stimulus at a speed that would take at least four seconds to reach the 45 degree angle.
3. Watch the eye carefully for any sign of jerking.
4. If jerking is observed, hold the stimulus at that position and verify the jerking continues.
5. Move the stimulus all the way to the left, back across the subject's face and check the right eye.
6. Repeat the procedure until each eye has been checked twice.

HGN Test Criterion

Vertical Nystagmus

1. Start with the stimulus approximately 12-15 inches from the face in front of the nose.
2. Elevate the stimulus up until the eyes can not elevate further.
3. Hold the stimulus in that position for a minimum 4 seconds.
4. If vertical nystagmus is present it must be distinct and sustained.

Test Interpretation

There are three clues in each eye and six total clues.

Lack of Smooth Pursuit

- Present
- Not Present
- If present, it accounts for 2 clues, one in each eye.

Distinct and sustained Nystagmus at Maximum Deviation

It is important to hold the eye in this position for at minimum of four (4) seconds.

This jerking must be distinct and sustained.

- Present
- Not present
- If present, it accounts for 2 clues, one in each eye.

Onset of Nystagmus Prior to 45 Degrees

The earlier the onset the more impaired a subject may be.

Documenting the HGN Clues

The HGN test has been researched and found to be a reliable indicator of impairment with subjects at or above 0.08 BAC.

Based on the 1998 San Diego field validation study, if four or more clues are observed, it is likely that the subject's BAC is at or above 0.08.

If two or three clues are observed, it is likely that the subject's BAC is at or above 0.04 but under 0.08.

When applicable you should always document the clues of impairment as you are conducting the roadside tests.

Make sure that you keep officer safety in mind when documenting these clues.

Each jurisdiction has come up with methods and forms to record the results. As long as these forms follow the NHTSA/IACP manuals, they may be used. Listed in your manual is only one example that could be used.

Walk and Turn Test

The Walk and Turn (WAT) test is divided into two stages:

1. Instruction Stage
2. Walking Stage

Instruction Stage

Stand heel-to-toe with arms at their sides.

Walking Stage

Balancing, walking heel-to-toe, and turning.

Officer safety precautions:

- Keep subject on your left when starting demonstration
- Never turn your back on a subject
- Be aware of surroundings

Instruction Stage

1. "Place your left foot on the line" (real or imaginary).

Demonstrate.

2. "Place your right foot on the line ahead of the left foot, with heel of right foot against toe of left foot".

Demonstrate.

3. "Place your arms down at your sides".

Demonstrate

4. "Maintain this position until I have completed the instructions. Do not start to walk until told to do so."

5. "Do you understand the instructions so far?"

Make sure subject verbally acknowledges understanding.

Walking Stage

1. "When I tell you to start, take nine heel-to-toe steps, turn, and take nine heel-to-toe steps back."

Demonstrate 3 heel-to-toe steps.

2. "When you turn, keep the front foot on the line, and turn by taking a series of small steps with the other foot, like this."

Demonstrate

3. "While you are walking, keep your arms at your sides, watch your feet at all times, and count your steps out loud."
4. "Once you start walking, don't stop until you have completed the test."
5. "Do you understand the instructions?" (Make sure the subject understands.)

Make sure subject verbally acknowledges understanding.

6. "Begin, and count your first step from the heel-to-toe position as 'one'."

Clues for Walk and Turn Test

Look for the following clues each time the Walk-and-Turn test is administered.

1. Cannot keep balance while listening to the instructions.
 - Record this clue if the subject does not maintain the heel-to-toe position throughout the instructions.
 - Feet must actually break apart or leave the line.
2. Starts before the instructions are finished.
 - Since you specifically instructed the subject not to start walking "until I tell you to begin," record this clue if the subject does not wait.
3. Stops while walking.
4. Does not touch heel-to-toe. The subject leaves a space of more than one-half inch between the heel and toe on any step.
5. Steps off the line. The subject steps so that one foot is entirely off the line.

6. Uses arms to balance. The subject raises one or both arms more than 6 inches from the sides in order to maintain balance.
7. Improper turn. The subject removes the front foot from the line while turning. Also record this clue if the subject has not followed directions as demonstrated, i.e., spins or pivots around.
8. Incorrect number of steps. Record if the subject takes more or fewer than nine steps in either direction.

**If a subject is unable to complete the test he/she will
be held accountable for only the clues that were observed.**

Documenting the Walk and Turn Clues

Each clue is noted by placing a slash in the appropriate place on the assessment form.

For example, if the subject raised their arms twice and stepped off the line three times, they would be considered to have demonstrated “two” clues.

It is a good practice to use an assessment form that documents the administrative procedures.

Considerations

Walk-and-Turn test requires a real or imaginary line, and should be conducted on a reasonably dry, hard, level, non-slippery surface.

There should be sufficient room for subjects to complete nine heel-to-toe steps.

However, recent field validation studies have indicated that varying environmental conditions have not affected a subject’s ability to perform this test.

This exercise has not been researched with individuals over 65 years of age.

Subjects wearing heels more than 2 inches high should be given the opportunity to remove their shoes.

Walk-and-Turn Test Criterion

- 2 or more clues indicates a BAC at or above .08

One Leg Stand

The One Leg Stand (OLS) test is divided into two stages:

1. Instruction stage
2. Balancing and counting

Instruction Stage

- Balancing
- Listening to instructions

The Balancing and Counting Stage

- Balancing and counting
- Short-term memory

Administrative Procedures

Initial Positioning and Verbal Instructions

1. “Stand with your feet together and your arms by your side.”
2. “Do not start to perform the test until I tell you to do so.”
3. “Do you understand the instructions so far?”

Make sure subject verbally acknowledges understanding.

Instructions for the Balancing and Counting Stage

1. "When I tell you to start, raise one leg, either leg, with the foot approximately six inches off the ground, keeping your raised foot parallel to the ground."
2. "Keep both legs straight, and your arms by your side."
3. "While holding that position, 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."
4. "Keep your arms at your sides at all times and keep watching the raised foot."
5. "Do you understand?"

Make sure subject verbally acknowledges understanding.

6. "Go ahead and begin the test."

You should always time for 30 seconds, at which time discontinue the test.

If the subject puts their foot down, instruct the subject to pick the foot up again and continue counting from the point at which the foot touched the ground.

Clues for One Leg Stand Test

Look for the following clues each time the One-Leg Stand test is administered:

1. Puts foot down.
2. Uses arms to balance.

Subject raises arms more than 6 inches from their side to balance.

3. Sways while balancing.

Side to side, back to front.

4. Hopping

Documenting the One Leg Stand Clues

Each clue is noted by placing a slash in the appropriate place on the assessment form.

For example, if the subject used their arms twice and swayed three times, they would be considered to have demonstrated “two” clues. It is a good practice to use an assessment form that documents the administrative procedures.

Considerations

Some people may have difficulty with the one leg stand test even when not impaired. Persons over 50 pounds overweight and /or with injuries to their legs and/or hips or inner ear disorders may have difficulty with this test.

This exercise has not been researched with individuals over 65 years of age.

Subjects wearing shoes more than 2 inches high should be given the opportunity to remove them.

One Leg Stand Test Criterion

- 2 or more clues indicates a BAC at or above .08

OPTIONAL SESSION
PROCESSING THE ARRESTED SUBJECT
AND
PREPARATION FOR TRIAL

OPTIONAL SESSION: PROCESSING THE ARRESTED SUBJECT AND PREPARATION FOR TRIAL

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

- Discuss the importance of correct processing and report writing procedures in DWI arrests.
- Discuss the correct sequence of DWI subject processing procedures.
- Discuss the essential elements of the DWI arrest report.
- 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

OPTIONAL SESSION: PROCESSING THE ARRESTED SUBJECT AND PREPARATION FOR TRIAL

Session Objectives

- Discuss the importance of correct processing and report writing procedures in DWI arrests.
- Discuss the correct sequence of DWI subject processing procedures.
- Discuss the essential elements of the DWI arrest report.
- Discuss the importance of pretrial conferences and presentation of evidence in the DWI trial.

The Processing Phase

Relationship to overall DWI enforcement function. Processing of arrested subject is the bridge between arrest and conviction of a DWI offender.

During processing phase, all evidence gathered during the detection phases is organized to ensure that it will be available and admissible in court. Additional evidence may be obtained during the processing phase, subsequent to arrest.

It is important that proper procedures be followed during this phase; otherwise, important evidence might be ruled inadmissible, and therefore worthless.

The processing phase begins with the arrest of the offender. Processing ends when the offender is incarcerated or released to a responsible third party (depending on jurisdiction).

Preparing the DWI Offense/ Arrest Report: Documenting the Evidence

Successful prosecution depends on clarity and completeness with which the arresting officer's and the evaluator's observations are presented.

Arresting officer must be able to convey observations with sufficient clarity to convince others there was probable cause to believe the subject was under the influence.

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.

DWI trials are often held many months after the defendant's arrest. A clear, concise report will enable the officer to recall those details and present them through direct testimony.

Evidence must be clearly conveyed in the formal structured reports (forms) and in a narrative offense/arrest report. A well-written, clear and convincing narrative report increases the likelihood that conviction will result because:

- Prosecutor is more likely to file the charge if the evidence is organized, clearly documented and compelling.
- Defense is less likely to contest the charge when the report is descriptive, detailed and complete.
- Helps to ensure convincing verbal testimony in court.

The written report should document all evidence available to establish the essential ingredients of the prosecution's case.

- That there was probable cause for arrest:
 - the accused was the operator or in actual physical control of the vehicle;
 - the accused was stopped based upon reasonable suspicion or a violation of law; and,
 - there was probable cause to believe the accused was impaired.
- That proper arrest procedures were followed.
- That proper procedure was followed with regards to the rights of the accused.

- That subsequent observation and interview of the accused provided additional evidence relevant to the alleged offense.
- That there was a proper request for the accused to submit to the chemical test.

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.

Narrative DWI Arrest Report

Report writing is an essential skill for every officer.

While there is no one best way to write a report, it is helpful to follow a uniform format.

Observation/results recorded on the field notes can be used to refresh the officer's memory when preparing the narrative report.

Suggested Report Writing Format

- Initial Observations
 - First observations of the offender and their actions
 - Factors that drew officer's attention
 - Time and location of first observations
- Vehicle Stop
 - Unusual actions taken
 - Offender's response to the stop command
 - Method(s) officer used to signal the stop command
 - The fashion in which the offender stopped the vehicle

- Face-to-Face Contact
 - Offender's personal appearance
 - Condition of eyes, speech, etc.
 - Names, numbers, seating locations of passengers
 - Unusual actions taken
 - Unusual statements made
 - What officer saw, heard and smelled
- Operation/Actual Physical Control
 - Establish offender as the operator
- Exit from Vehicle
 - Unusual actions, occurrences.
- Field Sobriety Tests
 - Physical performance
 - Mental performance
- The Arrest
- Disposition/Location of Vehicle and Keys
- Disposition of Passengers and Property
- Transport of Offender
 - Departure time
 - Arrival time
- Evidential Tests
 - What tests
 - Who administered
 - Test results

- Implied Consent/Miranda Admonitions
 - When given
- Statements of Witnesses
- Notification of Offender's Attorney or Other Party
 - Time of call(s)
 - Result of call(s)
- Citations/Complaints
 - Charges issued
 - When issued
- Incarceration or Release
 - Time
 - If released, to whom
- Additional Chemical Tests
 - Types of test
 - Time taken
 - Where taken
 - By whom administered

Case Preparation and Pretrial Conference

Guidelines for Case Preparation

Case preparation continues with your first contact with the subject:

- Use field notes to document evidence.
- Accurately note statements and other observations.
- Review the case with other officers who witnessed the arrest or otherwise assisted you and note relevant facts.

Upon receipt of subpoena or other notification of trial date:

- Review all records and reports
 - Field notes
 - Narrative report
 - Chemical test results
 - Other
- Revisit the scene if appropriate
- Compare notes with assisting officers

The Pretrial Conference

Successful DWI prosecution also depends on clarity and completeness with which an officer's observations are presented.

Officer must be able to convey observations with sufficient clarity to convince others that there was probable cause to believe the subject was under the influence.

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.

A pretrial conference with the prosecutor assigned to the case is very helpful. Try to insist on a pretrial conference if at all possible.

The prosecutor needs an opportunity not only to review the evidence but to discuss case strategy.

BE HONEST AND FORTHRIGHT.

Review all evidence and reasons for your conclusions.

If there are weak/strong points in your case, bring them to the attention of the prosecutor.

Ask the prosecutor to review the trial tactics/evidence to be presented:

- The officer's training and experience.
- The narrative arrest report.
- The officer's ability to articulate observations.
- Documents to be presented at the trial.
- Questions the prosecutor will ask the officer.
- Anticipated defense tactics.
- Responses to defense arguments and questions.
- The defendant's driving record.

The main point is to familiarize the prosecutor with the case and your qualifications as a witness, and to review case strategy.

If you cannot have a pretrial conference, try to identify the main points to be discussed with the prosecutor in the few minutes you will have just before the trial.

Guidelines for Direct Testimony

General Guidelines

It is the officer's job to present evidence in an impartial manner. Do not appear biased against defendant. Testify accurately and completely but also dispassionately. Don't be afraid to say "I don't know."

Avoid contact with the defense attorney if possible. Don't be upset if prosecutor and defense attorney appear friendly to each other.

Jury focuses on an officer's demeanor more than content of testimony.

Do not bring manuals or articles into court for reference.

Explain technical terms in layman's language.

Pay attention to what evidence/testimony can be and is excluded.

When describing subject's performance on SFST's, state that subject "performed the test as demonstrated" or "did not perform the test as demonstrated." Provide specific descriptive details concerning exactly what the subject did or failed to do on the test (e.g., "stepped off the line twice and staggered while turning.")

Typical Defense Tactics

The defense relies on several factors to "impeach" or discredit your testimony.

By impeaching your credibility:

- Inconsistencies
- Comparison with past testimony
- Testimony that is at odds with other established experts
- Lack of recall

By exposing the court to alternative conditions which account for your observations:

- Sickness
- Injury
- Other

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:

- Directly challenging formal training and experience.
- Demonstrating the officer lacks knowledge in the field by contrasting officer's knowledge with the defense expert's knowledge.

By demonstrating that the officer did not follow testing procedures established by departmental policy, training or legal precedent.

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 request.
4. Dress neatly and professionally. Leave sunglasses and 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 work, “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 using layman's terms. 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 layman'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 DWI Trial Recommendations

1. Never give the numerical preliminary breath test 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 preliminary breath test results of a defendant do not apply to witnesses, such as passengers in the car.
2. Always demonstrate how you conducted field sobriety tests. 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 tests 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 tests:
 - They are **divided attention tests**, 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 officer to articulate the reasons for concluding a driver was DWI to someone not present at the scene.
4. You are not required to know about the evidential breath-testing instrument's 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 evidential breath-testing instrument 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. When testifying about field sobriety tests 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.”

6. With a proper Motion In Limine from the prosecutor, you can testify only as to the observations you make on the field sobriety tests. 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 number five above. It is very important that you discuss this option with the prosecutor in advance of trial. This avoids the NHTSA/IACP 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 tests.

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. 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.

OPTIONAL SESSION

COMMON CHALLENGES AND DEFENSES IN A DWI/ALCOHOL CASE

OPTIONAL SESSION: COMMON CHALLENGES AND DEFENSES IN A DWI/ ALCOHOL CASE

This session will help the participant to:

- Identify the main challenges and defenses in DWI cases
- Formulate responses to combat defense challenges

CONTENT SEGMENTS

- A. Introduction
- B. Reasonable Suspicion
- C. Probable Cause
- D. *Miranda*
- E. Lack Of Moving Violation, Or Crash
- F. Evidentiary Chemical Tests And The Right To Counsel
- G. Refusal As Evidence
- H. Alternative Explanations For Observed Signs Of Impairment
- I. Horizontal Gaze Nystagmus
- J. Field Sobriety Tests
- K. Incomplete Arrest Report
- L. The Phantom Driver
- M. Local Legal Issues

***OPTIONAL SESSION: COMMON CHALLENGES AND DEFENSES IN
A DWI/ALCOHOL CASE***

Session Objectives

- Identify the main challenges and defenses in DWI cases.
- Formulate responses to combat defense challenges.

Introduction

An effort has been made to discuss only the most common defenses, therefore, not every issue discussed will be applicable in every jurisdiction and there may be issues unique to specific jurisdictions which are not included. Because of the variance in state laws, there are few case citations except to United States Supreme Court cases, state cases which are unique and represent a departure from the norm, or state cases which provide a clear illustration of a specific point. Always check state law before making any argument to the court.

Each section identifies a defense. Then there is a brief explanation of the issue, followed by the prosecution response. The section has “tips” which provide additional information and/or cautions.

Many of these defenses will be raised in the context of a pre-trial motion to dismiss or to suppress evidence. As you review the material, it will often state whether the issue involves suppression or dismissal. For example, motions to dismiss are commonly based on lack of reasonable suspicion to stop the driver and/or lack of probable cause to arrest.

Suppression motions seek to prevent evidence from coming before the court.

Although the court does not dismiss the case if the suppression motion is granted, the prosecution may lose compelling evidence, making it impossible to proceed as a practical matter. Typical suppression motions involve the field sobriety tests, chemical test results, refusals and any statements made by the defendant.

Reasonable Suspicion

The officer lacked reasonable suspicion to stop defendant, or, after stopping defendant, did not have reasonable suspicion to detain them for further investigation. Therefore, all evidence after the stop should be suppressed and the case dismissed.

Issue

Stopping and detaining a driver is a "seizure" within the meaning of the 4th and 14th Amendments to the U.S. Constitution even though the stop is limited and the detention brief.

In *Delaware v. Prouse*, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed.2d 660 (1979), the Supreme Court held that an officer must have reasonable and articulable suspicion of a violation of the law or that a driver is otherwise subject to seizure (as a fugitive, for example) before the officer can stop and detain a driver.

In a motion to suppress for lack of reasonable suspicion, the defendant may challenge either the initial stop or the subsequent detention.

Whether there was sufficient reasonable suspicion is a question of law. If the court determines there was not reasonable suspicion, then the evidence is suppressed and the prosecution has no case.

Response

Routine Traffic Stop

The officer stops the driver for an observed traffic violation, either moving or nonmoving, which may not give the officer any reason to suspect impairment. For example, the driver is stopped for speeding or an expired registration. The stop is justified because the officer has probable cause to arrest for the traffic violation.

Defendant may argue, however, that the officer lacked reasonable suspicion of driving while impaired to justify detaining defendant for investigation of DWI.

Facts that support the officer's suspicion are developed through observations of the driver.

Facts to support a finding of reasonable suspicion of impairment may include:

- Responding inappropriately to the emergency equipment, such as failing to pull over immediately
- Parking incorrectly
- Physical observations such as odor of alcohol, bloodshot eyes, slurred speech

- Open containers or drug paraphernalia
- Evidence that the driver vomited, urinated or defecated on them self
- Inability to produce a license and registration although in the defendant's wallet
- Inappropriate responses to questions
- An admission of drinking or drug use
- Inappropriate demeanor, e.g., excessively belligerent or abusive to the officer

Once the officer has developed reasonable suspicion of impairment, he or she is justified in detaining the subject for further investigation although the officer may not yet have sufficient facts to justify an arrest for impaired driving.

Stopped For Suspicion of Impaired Driving

In this scenario, the stop is actually based on the officer's suspicion that the driver is impaired whether or not the officer has seen a moving violation. Some examples which would support a finding of reasonable suspicion might include:

- Weaving within one's own lane
- Driving significantly slower than the posted speed limit
- Stopping for an excessive length of time at a stop sign for no apparent reason
- Failing to proceed when the light turns green
- Following too closely
- Wide turns

Unlike the stop based on a routine traffic violation, the officer must be able to articulate specific indicators of impaired driving which would justify stopping the driver.

Once the officer has made the stop, their observations of the driver will determine whether the initial reasons for the stop can be confirmed and whether there is additional suspicion to justify detaining the driver for a further investigation of DWI.

Example:

- The officer pulls the driver over for going too slowly and stopping for an excessive length of time at the stop sign.

When the officer speaks with the driver, however, the officer does not observe any other signs of impairment and the driver explains that they are looking for an address.

While the officer was justified in making the stop, he or she no longer has sufficient reasonable suspicion to detain the subject.

But suppose the officer observes an open container, smells alcohol on the driver's breath and the driver admits to having one beer. The officer may have sufficient reasonable suspicion to detain the driver for further investigation despite the driver's explanation about looking for an address.

Prouse, 440 U.S. 648, requires that the officer be able to articulate specific facts that, combined with the reasonable inferences flowing from those facts, justify the stop and/or detention.

Although the driver may contest or offer an alternative explanation for the officer's observations, such as bloodshot eyes from wearing contact lenses, those explanations should not defeat a finding of reasonable suspicion.

Alternative explanations go to the issue of reasonable doubt, not reasonable suspicion.

TIP: Challenges to reasonable suspicion often arise in two ways: sobriety checkpoints and anonymous tips or citizen informants.

Sobriety Checkpoints

The Supreme Court specifically determined that the use of sobriety checkpoints is constitutional in *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed.2d 412 (1990).

However, several states have outlawed checkpoints on state constitutional grounds, holding that drivers may not be stopped without reasonable suspicion directed towards an individual driver.

A few states have passed specific statutes authorizing sobriety checkpoints, which define the requirements for a legally permissible checkpoint.

Others have interpreted their state constitution in accordance with the federal constitution.

To survive a constitutional challenge, checkpoints should be established in accordance with a pre-determined plan and as part of an ongoing DWI enforcement effort.

Decisions regarding site selection, procedures for stopping drivers, and operation and duration of the checkpoint should be made at the command/supervisory level.

The more discretion given to the officers manning the checkpoint, the more likely the courts will find the checkpoint unconstitutional.

Moreover, there should be adequate concern for the safety of officers and drivers. Any detention must be minimally intrusive.

Even if the checkpoint is constitutional, an officer must develop reasonable suspicion of impaired driving within a short period of time to justify further detention of the driver for a DWI investigation.

There is no "brightline" standard defining how long the detention may be. In *Sitz*, the drivers were detained approximately 25 seconds.

Other courts have upheld a detention of as long as two to three minutes. However, the courts consistently refer to the permissible period of detention as "brief".

There is a split of authority whether deliberate avoidance of a checkpoint constitutes reasonable suspicion to pull a driver over.

Some courts have held that there must be an alternative route for citizens who do not want to go through the checkpoint; therefore, avoidance of the checkpoint does not constitute justification for a stop.

Other courts have held just the opposite, finding that deliberate avoidance of the checkpoint is reasonable suspicion.

Anonymous Tips And Citizen Informants

Although law enforcement officers have always used citizen informants and anonymous tips to detain suspected DWI offenders, the increased use of cellular phones has increased this phenomenon.

Information received from citizen informants and anonymous tips may be sufficient to provide reasonable suspicion for the officer to stop a car even though the officer did not see the violation.

Anonymous Tips – An anonymous tip which simply describes the color, make or model of a car, gives a location, and states that the driver is impaired may not be sufficient to support a finding of reasonable suspicion to stop without the officer's independent observations of a traffic violation or indicia of impaired driving.

This requires that the officer locate the car, follow it, and make observations before stopping the driver.

Citizen Informants – The more information received from the informant that can be corroborated by the officer, the more likely the court will find reasonable suspicion. The willingness of the citizen to identify them self and to talk to the officer at the scene is helpful.

The more specific the informant is as to the car's description, identity of the driver, and the observations that made them believe the driver was impaired, the more likely the court will be to justify the stop based on the call even if the officer did not actually observe the driving pattern or violation. If the information is conclusory or indefinite, the officer generally cannot rely on it to form a basis for reasonable suspicion.

TIP: Even when the court finds sufficient reasonable suspicion for the stop based on a tip, if the witness is not available for trial, the evidence is hearsay and may not be admitted. Some courts have allowed information given to law enforcement dispatch into evidence not for the truth of the matter (that the driver was impaired) but to explain the officer's conduct in stopping defendant.

Probable Cause

The officer lacked probable cause to arrest; therefore, the case should be dismissed.

Issue

An arrest is a "seizure" under the 4th Amendment and must be supported by probable cause. At what point does an officer have sufficient evidence to justify arresting the driver?

Reasonable suspicion and probable cause are two ends of the same continuum, which begins with a decision to stop and detain a driver and ends with the arrest.

Reasonable suspicion focuses on what circumstances exist to justify the stop and/or detention, while probable cause focuses on the evidence which supports the arrest.

Unfortunately, courts have clouded the issue by using imprecise language when talking about the two concepts.

Response

Probable cause requires that there be sufficient articulable facts for a reasonable person in the officer's position to believe that a crime has been committed by the suspect before the officer makes an arrest.

Probable cause is based on the totality of the circumstances.

The facts, which support a finding of reasonable suspicion, are also relevant to the probable cause inquiry and provide the foundation for further development of probable cause.

The difference between the two concepts is in the quantity of the evidence.

The courts have defined probable cause as the point when the facts and circumstances within the officer's knowledge and of which he or she has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in believing that an offense has been or is being committed.

At a suppression hearing, the facts and circumstances are to be judged from the officer's viewpoint, i.e. subjectively.

Nevertheless, the officer's opinion that there was sufficient evidence to arrest must be objectively reasonable.

Example:

- An officer pulls a driver over for speeding.

During the course of the officer's conversation with the driver, the officer smells alcohol on the driver's breath and notices the driver's bloodshot eyes.

TIP: If an officer does not smell alcohol, the driver may be otherwise impaired, i.e., drugs, prescription drugs, illness, etc. If available, the officer should have contacted a DRE (Drug Recognition Expert) for further evaluation.

At this point the officer has probable cause to arrest for speeding but only reasonable suspicion that the driver is DWI.

However, as the officer interacts with the driver, he or she notices other indicia of intoxication: slow, hesitant speech; difficulty producing a license and registration; inappropriate responses to questions; an open container at defendant's feet; increasingly belligerent behavior; failure to perform the field sobriety tests correctly or a refusal to take the tests.

At some point during this interaction, the officer will have to decide when there is enough evidence to justify an arrest.

There is no hard and fast rule as to when reasonable suspicion turns into probable cause.

One or two signs, particularly if commonly associated with drinking, will generally be sufficient to support reasonable suspicion. Several signs will be required to find probable cause.

Even though the defendant may offer alternative explanations for the signs and symptoms of impairment observed, if those signs and symptoms are also indicative of impairment due to alcohol consumption, the court should find probable cause.

Moreover, probable cause is not required to be proven beyond a reasonable doubt; there need only be sufficient evidence to justify a belief that the defendant was driving while impaired.

However, the evidence which establishes probable cause to arrest is likely the most persuasive evidence of guilt.

The general rule is that an officer need only have reasonable suspicion of DWI to request a motorist to perform Standardized Field Sobriety Tests (SFSTs). Defendant's performance on the SFSTs goes to the officer's development of probable cause.

Jurisdictions which use preliminary breath tests (PBTs) usually confine the PBT results to the issue of probable cause and preclude use of the results at trial. The use of a PBT should occur after conducting the SFSTs.

TIP: Probable cause often becomes an issue if the defendant refused field sobriety tests and/or the evidentiary chemical test. This is a popular motion by defense counsel because the court will never learn the results of the chemical test, and the court will make its decision based only on the facts developed by the officer before arrest.

If the defendant refused SFSTs, the officer is then required to determine whether to arrest or let defendant leave.

If an arrest is made, it is vital to have the officer explain every sign or symptom which supports the arrest decision.

Otherwise, the court may find that the officer's suspicion did not rise to the level of probable cause.

If defendant performs the SFSTs but refuses the evidentiary chemical test, the defense will argue that the officer's observations do not support a finding of probable cause. Defense may challenge the validity of the tests given or the officer's observations of defendant's performance on tests.

Miranda

Admissions, statements and field sobriety tests should be suppressed because defendant was not given *Miranda Warnings*.

Issue

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966), held that the prosecution may not use a defendant's admissions or statements as evidence against the defendant which are the product of custodial interrogation unless defendant was first advised of, and knowingly and intelligently waived, his 5th Amendment privilege against self-incrimination.

Custodial interrogation is defined as questioning initiated by an officer after a subject has been taken into custody or otherwise deprived of their freedom of action in any significant way.

Miranda does not apply to statements that are unsolicited and spontaneous, those which are made when the defendant is not in custody, or to "non-testimonial" evidence, such as performance on SFSTs or other behavioral evidence.

Response

Preliminary Investigation Is Non-Custodial

In *Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed.2d 317 (1984), the Court recognized the applicability of *Miranda* to traffic stops but held that the preliminary investigation was not custodial even though the driver may be temporarily detained.

In accordance with *Berkemer*, the majority of courts have held that routine questions and field sobriety tests are investigatory to determine whether a crime has in fact been committed.

Generally, *Miranda* is not required until after field sobriety tests have been administered and defendant arrested.

Any interview after the arrest requires the *Miranda* warning.

The officer's determination that the individual was not free to leave does not mean the defendant is "in custody" for purposes of *Miranda*, as stated above. Ultimately, it is the court's determination, based upon an objective view of the facts, as to whether or not the person was "in custody".

Defense counsel may argue that the circumstances surrounding the stop indicate the defendant was not free to leave and, therefore, subject to custodial interrogation requiring suppression of all admissions or statements.

In advocating that the defendant should have been given *Miranda*, defense counsel will try to move the point at which the officer determined defendant was not free to leave to the earliest moment in the officer/driver encounter.

If the officer testifies that he or she felt they had probable cause to arrest based on the driving pattern alone and defendant was not free to leave from the moment they were pulled over, counsel will argue that defendant was "in custody" and should have been given *Miranda*.

Following *Berkemer*, this argument would fail under a federal constitutional analysis; however, it may have greater weight under a state constitutional analysis, particularly in those jurisdictions seeking to develop a body of state constitutional law or which have announced that the state constitution provides greater protection to its citizens than the federal constitution.

A decision to arrest is based on the totality of the circumstances.

During the preliminary investigation and field sobriety tests, the officer is gathering information to determine whether defendant is impaired.

As long as the officer has reasonable suspicion to detain the defendant, he or she may conduct an investigation without violating *Miranda*.

The officer's subjective belief that there was probable cause to arrest before the conclusion of all SFSTs would not turn the investigation into a custodial situation.

"Probable cause" is an objective standard based on what a reasonable person in the officer's position would believe.

Other courts which have considered this issue have found that defendant was not "in custody" when field sobriety tests were given. Thus, *Miranda* was not required to be given.

Standardized Field Sobriety Tests Are Non-Testimonial

This section generally applies to those field sobriety tests that are not part of the Standardized Field Sobriety Test battery, such as counting backwards or reciting the alphabet. *Miranda* warnings are to protect verbal (testimonial), not physical (non-testimonial) expression.

Although in *Pennsylvania v. Muniz*, 496 U.S. 582, 110 S. Ct. 2638, 110 L. Ed.2d 528 (1990), the Court held that asking defendant the date of his sixth birthday was testimonial, the Court specifically declined to address whether the other verbal aspects of field sobriety tests, such as counting out loud, are testimonial.

Approximately half the states have addressed the specific issue whether field sobriety tests are testimonial.

All states have found that the physical aspects of the SFSTs, such as standing on one leg or walking heel-to-toe, are non-testimonial.

Two state supreme courts have held that verbal portions of the SFSTs, e.g., counting out loud or reciting the alphabet, are testimonial because they reveal beliefs or thought processes.

Therefore, in Oregon and Florida, the verbal portions of the tests are subject to the 5th Amendment privilege against self-incrimination and *Miranda* must be given.

In the absence of *Miranda* warnings or a waiver, an officer may not testify regarding the person's ability post arrest to count out loud, say the alphabet, give their middle name, or other verbal responses.

Audiotapes of the field sobriety tests are not admissible and videotapes must have the verbal portions deleted.

Typically, the state may still offer evidence regarding the physical characteristics of defendant's speech, e.g., it was slurred or difficult to understand.

TIP: Often the officer will conduct an interview with defendant after the evidentiary chemical test has been taken and this can be a problem. The defendant should be given *Miranda* before this interview is conducted.

Miranda requires that defendant make a knowing and intelligent waiver of their right against self-incrimination.

The defense may argue that if defendant was as impaired as the officer testified, they could not possibly have made a knowing and intelligent waiver; therefore, all post-arrest statements should be suppressed.

The prosecutor should look to the totality of the circumstances to determine whether the waiver was knowing and intelligent. What did defendant do or say that evidenced their understanding of the arrest?

For example:

- Was the defendant able to respond appropriately to the officer's questions during the investigation?
- Did the defendant attempt to follow the officer's instructions on the SFSTs?
- Did the defendant ask appropriate questions?
- Did the defendant say that their rights were understood?
- Was defendant able to provide correct information about their name, date of birth, address, etc?

Lack of Moving Violation or Crash

Defendant was not violating any traffic law, nor did they cause a crash, therefore, they could not have been impaired.

Issue

In a DWI prosecution the issue is whether defendant was impaired to the degree that they were less safe as a driver than an unimpaired driver.

A traffic violation is not a predicate to an impaired driving charge; the impaired driving is the offense.

Response

The prosecutor should educate the jury about the elements of a DWI case. The prosecutor should explain to the potential jurors that the state does not need to prove that defendant was drunk, that he or she drove poorly, nor that there was a crash, only that defendant was impaired to the degree that they could not operate the vehicle safely.

Evidentiary Chemical Tests and the Right to Counsel

Defendant was not given an opportunity to consult with counsel prior to deciding whether to submit to the breath test. Evidence of either a refusal or the results of a test taken without the advice of counsel should be suppressed.

Defendant was confused and believed they had a right to counsel before deciding whether or not to take the test, therefore, the refusal should be suppressed.

Issue

Does a defendant have the right to counsel prior to deciding whether to submit to the chemical test? If so, how far does that right to counsel extend? What must an officer do to protect defendant's right to counsel?

Whether a DWI subject has a right to counsel prior to submitting to a chemical test is purely a matter of state law; there is no federal precedent.

There is a split of authority among the states on this issue.

Response

No Right To Counsel

The majority of states do not recognize the right to counsel prior to deciding whether to submit to the chemical test.

Generally, states with implied consent laws hold that these laws are purely civil in nature. In these jurisdictions, if the defendant asks to speak with an attorney before deciding to submit to the chemical test, they must be told that their right to counsel does not apply at this stage of the procedure.

If defendant persists in their request for counsel after being warned, the request is treated as a refusal. Even in these jurisdictions, if the defendant claims that they were confused about their right to counsel, the courts will generally not treat the request for an attorney as a refusal unless there is clear evidence that defendant was informed that their right to counsel does not apply to the decision to take the test.

Defendant's confusion most often arises as a defense when the officer gives *Miranda* prior to asking for the chemical test and then tries to explain that defendant does not have the right to consult with an attorney until after the test.

Right To Counsel

A minority of jurisdictions do recognize a right to counsel before deciding whether to submit to the chemical test; however, there are differences in approach.

Some states base the right to counsel on an interpretation of the state constitution.

Others have passed statutes granting the right in a DWI case but do not consider it a constitutional right.

Where defendant has a right to counsel, the issue is how far that right extends.

Defendant's right to counsel is satisfied when there is a reasonable opportunity to consult with an attorney prior to the decision to take the chemical test.

The opportunity to consult with an attorney by phone is sufficient; the attorney need not be present at the actual administration of the test.

However, if the defendant or their attorney requests that the attorney be present for the test, the officer may be required to wait for defendant's counsel when the request will not unreasonably delay the test or otherwise unduly interfere with other officer responsibilities.

It is not necessary that defendant actually consult with counsel as long as they are provided with a legitimate opportunity. For example, DWI statutes often require that a chemical test be given within a designated period of time after driving, usually two or three hours.

Where defendant has been given the opportunity to call an attorney but has been unsuccessful in reaching one within the statutory time limits, they may be required to make a decision about taking the test without consultation.

An officer must provide a timely opportunity to consult and may not hinder the consultation.

Generally, officers do not have an affirmative duty other than to give notice of the right to counsel, provide access to a telephone and directory, and allow a reasonable degree of privacy to make contact.

Since the officer is required to keep defendant under observation to ensure that they do not eat or drink anything prior to the test, the officer is not necessarily required to leave defendant totally alone while they consult with counsel.

TIP: In the criminal proceeding, the remedy for violation of a defendant's right to counsel is suppression of the evidence, whether the evidence is a test result or the defendant's refusal. Defense arguments that a violation of the right to counsel directly impinges on a defendant's right to a fair trial have been generally unsuccessful.

Refusal as Evidence

Evidence of defendant's refusal to perform Standardized Field Sobriety Tests (SFSTs) or to take the evidentiary chemical test is compelled testimony.

Therefore, the use of the refusal as evidence against the defendant violates the 5th Amendment privilege against self-incrimination.

Alternatively, the refusal does not tend to prove that the defendant was impaired and should be suppressed as irrelevant.

Issue

The 5th Amendment

A 5th Amendment analysis raises two questions: (1) Is the evidence testimonial? (2) Is it the product of compulsion?

The 5th Amendment states "No person shall be compelled in any criminal case to be a witness against himself". The courts have interpreted this phrase to mean that an accused cannot be required to testify or give testimonial evidence against himself.

The disputed evidence must be both testimonial and compelled to implicate the privilege against self-incrimination. Evidence is testimonial if it reveals a defendant's belief, knowledge, or state of mind.

A refusal arguably reveals a defendant's belief that if they submit to the tests, they will fail.

Although the privilege against self-incrimination does not apply to physical evidence, an act need not be verbal to be testimonial. Nodding or shaking the head in response to a question is testimonial.

The defendant may argue that the refusal was compelled because it requires them to make a choice between two potentially incriminating responses: (1) taking the tests and risk failing, or (2) refusing and having the refusal used against them.

Relevance

Federal Rule of Evidence (FRE) 402 states that "Evidence which is not relevant is not admissible."

FRE 401 defines relevant evidence as "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

State codes have similar provisions regarding the admissibility of evidence.

Does the fact that the defendant refused to perform the SFSTs or take the chemical test tend to prove that they were impaired?

Response

Standardized Field Sobriety Tests

5th Amendment

The majority of jurisdictions ruling on this issue have held that field sobriety tests, including the verbal portions of the tests, are non-testimonial and evidence of defendant's performance does not violate their privilege against self-incrimination.

In considering whether a refusal is testimonial, these courts have analogized the refusal to the SFSTs themselves and found the refusal non-testimonial.

Because the refusal is non-testimonial, it can be used against the defendant just as any other item of physical evidence.

The evidence must be both testimonial and compelled to be a 5th Amendment violation. The issue of whether the refusal is compelled arises only if the court finds the refusal to be testimonial.

In *Allred v. State*, 622 So.2d 984 (Fla. 1993), the Florida Supreme Court held that the verbal portions of the SFSTs were testimonial.

However, in *State v. Taylor*, 648 So.2d 701 (Fla. 1995), the court held that a refusal to submit to SFSTs was not compelled, therefore, the refusal was admissible.

The Virginia Court of Appeals also rejected the compulsion argument; however, the court also implied that it did not find the refusal to be testimonial. *Farmer v. Commonwealth*, 404 S.E.2d 371 (Va. Ct. App. 1991) (*reh'g en banc*).

Massachusetts and Oregon have found the refusal both testimonial and compelled under a state constitutional analysis.

In *Commonwealth v. McGrail*, 647 N.E. 712 (Mass. 1995), the court found the refusal testimonial because it communicated a defendant's belief that he would not pass the test.

The court also found the refusal to be compelled. Since a defendant is not required to submit to SFSTs, use of the refusal enables the state to obtain evidence to which it would otherwise not have a right.

In *State v. Fish*, 893 P.2d 1023 (Ore. 1995), the court found the refusal to be testimonial because it conveys a belief that defendant will fail.

It is compelled because the defendant is forced to give evidence against themselves either by taking the SFSTs or refusing, both choices that are potentially incriminating.

Therefore, in Massachusetts and Oregon, evidence of refusal is inadmissible under the state equivalent of the 5th Amendment. This result is clearly a minority position.

Relevance

Two cases have addressed refusal of SFSTs. They are:

Griffith v. State of Texas, 55 S.W. 3d 598, 601 (Tex Crim. App, 2001), states “evidence of a defendant's refusal to perform field sobriety tests also is admissible and circumstantially relevant to the issue of intoxication.”

Greenbough v. State of Oregon (2007), ruled that evidence of a refusal of either the field sobriety tests or the chemical test is admissible.

Evidentiary Chemical Tests

5th Amendment

In *Schmerber v. California*, 384 U.S. 757, 865 S.Ct. 1826, 16 L.Ed.2d 908 (1966), the Court held that the results of a blood test were neither testimonial nor communicative, thus, were not subject to the 5th amendment.

Later, in *South Dakota v. Neville*, 459 U.S. 553, 103 S.C. 916, 74 L.Ed.2d 748 (1983), the Court held that since a refusal to submit to a chemical test was a matter of choice, not compulsion, the 5th amendment privilege against *compulsory* self-incrimination was not implicated.

The Court did not address whether the refusal was itself testimonial.

The majority of states which have considered the issue follow the reasoning noted above.

The 5th Amendment protection is limited to compulsory self-incrimination and since a refusal is a free choice, the 5th Amendment is not implicated.

Since the refusal is not compelled, it does not matter whether it is testimonial.

Therefore, the evidence of refusal is admissible and may be argued as a "consciousness of guilt".

A minority of states has held under the state constitution that a refusal is both testimonial and compelled.

The compulsion exists because the defendant tends to incriminate them self by either refusing or taking the test.

Relevance

Another challenge to the admission of the refusal is on grounds of relevance.

The common sense argument is that a defendant refuses to take the chemical test because it will confirm that they have had too much to drink and will test over the *per se* limit.

A minority of courts have held that the refusal does not tend to prove impairment, therefore, it is not relevant.

In addition, any probative value of the refusal is far outweighed by the potential prejudice.

<p><i>TIP:</i> In some jurisdictions, whether a refusal can be admitted into evidence is governed by statute.</p>
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Alternative Explanations for Observed Signs of Impairment

Most defendants will offer a host of alternative explanations in an effort to excuse or explain away the signs of impairment the officer observed.

Defenses such as being fatigued, on medication, or suffering a diabetic reaction concede that the driver was impaired and corroborate the officer's observations.

These defenses are offered as an excuse.

Instead of impairment by alcohol consumption, which is illegal, the defense seeks to attribute the impairment to a cause which is either not illegal or which is designed to gain sympathy for the defendant.

For example, driving while excessively fatigued or ill to the point that it affects driving may be illegal, but it is usually a minor traffic offense as opposed to the seriousness of DWI.

And in some jurisdictions, there may not be a law prohibiting driving while fatigued or ill.

Other defenses challenge the existence of impairment and seek to explain away the officer's observations by offering explanations which do not demonstrate alcohol consumption or impairment:

- defendant could not locate their driver's license because they were nervous,
- defendant's eyes are bloodshot because they wear contact lenses,
- he has poor balance because of a bad back, etc.

Diabetes

Defense

Defendant claims that they were not impaired by alcohol (illegal), but suffering from a diabetic reaction (not illegal).

Issue

With the diabetes defense, the defendant is admitting that they were impaired but offering a legally recognized excuse.

There are several issues of which a prosecutor should be aware when attempting to rebut a diabetes defense.

It is important to recognize that there are two types of diabetes: Type I (insulin dependent) and Type II (non-insulin dependent).

Insulin dependent diabetics take insulin injections to lower blood sugar, as their pancreas generates little or no insulin.

Type II diabetes results when there is insufficient insulin production to maintain blood sugar at normal levels. Type II diabetes is usually controlled through diet and/or oral medication.

This defense is generally raised with a Type I diabetic, but may be raised by a Type II diabetic.

When a diabetic does not eat regularly or enough, they may suffer from low blood sugar or hypoglycemia/insulin reaction. Hypoglycemia will occur even more quickly if a diabetic drinks without eating.

The symptoms of an insulin reaction may be similar to a person under the influence of alcohol: slurred speech, uncoordinated movements, confusion, and an alcohol-like odor on the breath (acetone). These symptoms would be more likely to occur if a Type I diabetic were having an insulin reaction.

An additional complication is that the diabetic defense also includes a ready-made explanation for high breath test readings. The defense claims that acetone emitted by the defendant's breath interferes with and creates an artificially high breath alcohol result.

The National Highway Traffic Safety Administration (NHTSA) issued a report in September 1985 regarding acetone interference in breath alcohol measurement. NHTSA's report concluded that diabetics with a higher than normal acetone level usually suffer from "uncontrolled" diabetes (inability to maintain blood sugar at normal levels or non-diabetic levels), which would make the true diabetic too sick to drive and would generally require hospitalization.

Diabetics with their condition under control would not generate significant enough amounts of acetone on their breath to interfere with a breath alcohol measurement. A non-insulin diabetic is unlikely to even emit acetone from their breath. Moreover, most of the current breath test devices have the ability to screen for interferants such as acetone. The instrument will record the presence of an interferant and abort the test.

Response

To determine if the defendant may have a valid diabetes defense, a law enforcement officer should do the following:

- Check for medic alert bracelet or medical indicators that support that they are diabetic.
- Check for evidence of diabetic maintenance equipment (Dial-a-Pump pens, syringes, etc.).
- Ask if they suffer from any medical conditions requiring on-going treatment.
- Did defendant seek medical treatment at the time of incarceration?
- Ask if the defendant is an insulin or non-insulin dependent diabetic.

Fatigue

Defense

"I wasn't impaired by alcohol. I was just tired."

Issue

What is the cause of defendant's impairment?

DWI statutes specifically require that impairment be caused by ingestion of alcohol or drugs or a combination of drugs and alcohol. Therefore, if defendant can persuade the trier of fact that fatigue was the cause of their impairment, they cannot be convicted under a DWI statute.

Response

It is important to realize that a defendant who claims fatigue is not really challenging the officer's assessment of impairment; they are merely offering an alternative explanation for that impairment.

Most DWI cases contain evidence of defendant's drinking in addition to the observations of impairment, such as the odor of alcohol on the defendant's breath or open containers in the car. Therefore, a defendant usually will not deny alcohol consumption, but will claim that they drank only a minimal amount, the classic "two beers" defense.

Did the defendant offer the fatigue excuse to the officer at the scene? If so, what did the officer do to determine if fatigue was a factor?

Did the officer ask or note in the report how long it had been since defendant last slept? Stress the impairment observed.

If defendant testifies, get them to admit that driving while fatigued is unsafe.

Examine them about just how much they had to drink, if only to confirm the minimal amount told the officer.

Get the defendant to admit that people do not drink alcohol to stay awake.

Common sense says that alcohol has a more pronounced effect on a fatigued driver.

Medication

Defense

“I was not impaired by alcohol. I was on medication.”

Issue

Again, defendant is not actually contesting impairment, only its cause.

In states which prohibit driving under the influence of alcohol, drugs, or any combination of alcohol or drugs, being under the influence of medication is not a legal defense. However, it has tremendous factual appeal to jurors who may not believe that a person taking medication should be prosecuted at all.

Response

Did defendant tell the officer they were on medication at the time of the arrest? Usually, officers will ask if the defendant was ill, injured or on medication of any type that would influence their ability to perform field sobriety tests. If the defense surfaces for the first time at trial, jurors will likely see it as untrue.

Find out all you can about the medication that defendant claims to have been taking. Check the Physician's Desk Reference (PDR) for information about effects: specifically, if there are warnings about drowsiness, driving while taking the medication, or combining the medication with alcohol or other drugs.

Pin down the amount and when it was taken in relation to driving. Ask if they read the package inserts and if they warn against driving or about drowsiness as a side effect.

If it is a prescription medication, what warnings was defendant given about possible impairing effects? Were they warned against combining the medication with alcohol or other drugs?

There will likely be independent evidence of alcohol consumption, such as the odor. Did defendant admit drinking, even in small amounts? Stress the warnings against combining the medication and alcohol.

The prosecution may call a DRE or another expert witness to testify about alcohol and drug combinations. Although jurors may be sympathetic to someone on medication, they will not be if it can be shown that defendant was irresponsible in not following the directions. Stress the dangerousness of combining alcohol with even over-the-counter medications.

TIP: Defenses which rely on excuses such as medication are designed primarily to appeal to the natural tendency of jurors to put himself or herself in a DWI defendant's place.

Part of any effective DWI prosecution is educating the jurors to the seriousness of impaired driving. People on medication are under an obligation to ensure that they do not endanger the safety of themselves or others on the highway.

Physical Condition

Defense

Defendant was not impaired. He or she suffers from a physical condition (back or leg injury, overweight, foot/knee problems, etc.) which causes them to lose balance, or be unable to stand on one leg.

Issue

Unlike the excuses, defendant is not admitting to impairment.

While conceding that the officer observed what appeared to be impairment, defendant is offering an explanation unrelated to the impairment. The issue is simply whether defendant was impaired.

Response

A DWI arrest is based on the totality of the circumstances. It is unlikely that the only evidence of DWI is defendant's performance on the SFSTs or their inability to walk or stand without difficulty.

Usually, the first things noticed by the officer are the driving pattern, the odor of alcohol, bloodshot eyes, slurred or incoherent speech, or an inability to produce a license.

The officer should be prepared to articulate their observations which may contradict the defendant's claim of physical disabilities. Was defendant's physical problem explained to the officer and what did the officer do to corroborate it? Was the defendant given field sobriety tests that would not be affected by the condition, such as the finger-to-nose?

Results of the HGN test are particularly critical in these types of cases. If defendant suffers from an alleged medical condition, are they on medication which may contribute to the impairment?

Remind officers that jurors will observe defendant's appearance and demeanor in court. If the defendant testifies and claims to suffer a chronic back ailment which causes balance problems, were any balance problems observed as they walked around the courthouse? Officers should be reminded to watch and listen to the defendant in any post-arrest proceedings, and correlate those observations with those made during the arrest.

TIP: If defendant offers these explanations in a pre-trial motion to suppress or dismiss for lack of probable cause, remember, to establish probable cause, the officer need only have reasonable ground to believe that a crime had been or was in the process of being committed.

TIP: The officer is not required to eliminate all other possible explanations for the behavior.

Nervousness

Defense

Defendant was not impaired, just nervous.

Issue

Was defendant impaired or were the officer's observations consistent with a nervous person?

Response

It is certainly natural that someone who has just been stopped by an officer would be nervous, particularly if that person had been drinking.

Point out all of the evidence that supports defendant's impairment, which would be unaffected by their nervousness: driving pattern, odor, slurred speech, presence of HGN, etc.

Horizontal Gaze Nystagmus

Defense

Evidence of Horizontal Gaze Nystagmus (HGN) should be suppressed because the test is not scientifically reliable and/or the officer is unqualified to administer and interpret the test.

Issue

There have been numerous challenges to the admissibility of HGN as a field sobriety test.

Courts have varied in their approach to its admissibility depending upon the standard for admissibility of scientific evidence in a given jurisdiction. It is essential for prosecutors to know the standard in their jurisdictions.

In general, the defense will argue that HGN is a scientific test that either (1) does not meet the *Frye* standard of "general acceptance", or (2) that there is insufficient indicia of reliability to be admissible under *Daubert/FRE 702*.

The third challenge focuses not on the test itself but the ability of the officer to administer and interpret the test results.

Courts have typically responded to HGN challenges in one of the following ways:

- HGN meets the *Frye* test,
- HGN meets the more relaxed standard under *Daubert/FRE 702*,
- HGN is neither new nor novel and requires only a showing of relevance, or
- the prosecution has failed to carry its burden of proof in demonstrating that HGN meets the required criteria for admissibility.

Only the Mississippi Supreme Court has found that HGN "is not generally accepted in the scientific community." *Young v. City of Brookhaven*, 693 So.2d 1355 (Miss. 1997). The basis of the court's decision is unclear since no *Frye* hearing was held.

Other courts which have rejected HGN have done so on the basis that the officer's testimony alone is insufficient to demonstrate scientific reliability.

Response

Frye

In *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed.2d 469 (1993) the U.S. Supreme Court held that Federal Rule of Evidence (FRE) 702 had replaced *Frye* as the standard for the admissibility of scientific evidence.

Nevertheless, a number of states continue to adhere to the "general acceptance" standard enunciated in *Frye* even when the state has adopted the Federal Rules of Evidence.

In jurisdictions maintaining *Frye*, an evidentiary hearing should be held to determine if HGN meets the requirement of general acceptance in the relevant community.

In *State v. Superior Court (Blake)*, 718 P.2d 171 (Ariz. 1986), the Arizona Supreme Court held that HGN meets the *Frye* standard of admissibility.

Blake remains the seminal case on the admissibility of HGN under *Frye*.

Daubert/FRE 702

Several states have held HGN scientifically reliable under the more relaxed standard set by the Federal Rules of Evidence and the equivalent state evidentiary rules.

The Federal Rules favor admissibility of all relevant evidence.

If evidence is admissible under *Frye*, it is also admissible under FRE 702.

In *Daubert*, the Court held that *FRE 702* governs the admissibility of scientific evidence.

However, even under *FRE 702*, the proponent must establish some degree of scientific reliability.

The Court listed several factors relevant to determining scientific reliability:

- can the theory or technique be tested,
- has it been subject to peer review,
- what is the known or potential rate of error and,
- is there "general acceptance".

The listed factors are not exclusive nor does the presence or absence of any one factor determine admissibility.

If the science or methodology has gained "general acceptance" under *Frye*, it will also meet the *FRE 702* standard.

The difference is that the proposed scientific evidence does not need to be generally accepted to be admissible under FRE 702.

HGN Is Not Scientific And No Showing Of Scientific Reliability Required

A few courts have declined to rule on the basis of scientific reliability, treating HGN solely as a field sobriety test with observable and objective signs.

Several courts have determined that HGN is well established, not new nor novel, and therefore, no evidentiary hearing is required.

Officer's Qualifications

Once the court allows HGN evidence, the prosecution must establish that the officer is properly trained to administer the test and that the test was administered in accordance with that training.

Individual states may require that an officer be certified to administer the test.

Many officers maintain logs of every HGN test they give, the arrests made and the actual BAC.

This can be powerful evidence in demonstrating both the reliability of the test and the officer's proficiency in administering the test and interpreting the results.

Evidentiary Hearings

A number of states have found HGN admissible for at least one purpose, either probable cause or substantive evidence of impairment.

The majority of courts find HGN admissible, but for prosecutors admission is a question of foundation.

An increasing number of courts appear willing to take judicial notice of HGN's scientific reliability.

This is a minority position, however, and if there are any doubts about a court's willingness to take judicial notice, request an evidentiary hearing with expert witnesses who can establish the scientific basis for the test as well as the ability of the officer to administer the test in the field and interpret the test results.

In the states which have rejected HGN, the courts have specifically held that the prosecution failed in its burden to establish reliability, **not** that the test is unreliable.

But see Young v. City of Brookhaven, 693 So.2d 1355 (Miss. 1997). In this case, the prosecution attempted to admit HGN based solely on the arresting officer's testimony without first establishing the reliability of the test through the use of expert witnesses or submitting to the court case law and scientific literature validating HGN.

Limitations On The Use Of HGN

Even where the courts have accepted HGN evidence, the purposes for which it may be admitted vary.

HGN is not a substitute for the chemical test and, in the absence of a chemical test, courts will not allow the officer to testify as to what the defendant's BAC was based on HGN.

If, however, defendant submitted to an evidentiary breath or blood test and now challenges the result, the court may allow the officer's opinion to corroborate the test result.

Some courts have limited HGN evidence to a determination of probable cause or some evidence of alcohol consumption. Others allow it as substantive evidence of impairment.

Other Causes Of Nystagmus

Be aware that Nystagmus can be induced by things other than alcohol or drug use.

Alcohol or drug induced Nystagmus is only one cause of Nystagmus.

Neurological dysfunction, for example, may cause Nystagmus.

As with all field sobriety tests, alternative explanations for the officer's observations go to the weight of the evidence and not its admissibility.

A small percentage of the population will demonstrate nystagmus at maximum deviation.

However, the other clues - lack of smooth pursuit and an angle of onset prior to 45 degrees - will not be present.

Since the other clues are not observed, the officer should find that HGN was not present.

Among other things, spinning a person around rapidly or irrigating the ears with either hot or cold water may induce nystagmus.

The defense may try to confuse the issue by referring to these other causes of nystagmus.

None of the alternative methods of inducing nystagmus are likely to occur outside of a laboratory setting and are, therefore, irrelevant.

The common sense response to these other methods of inducing nystagmus is that there is no evidence that defendant had hot and cold water poured in their ears, or that they were spun around rapidly.

It is also important to note that the Nystagmus ceases rapidly when induced by these means.

For example, a defendant who was in a crash may claim that the car spun around several times during the crash and this caused the nystagmus.

This type of nystagmus passes rapidly and would not be observable by the time the officer administered the HGN test.

Field Sobriety Tests

Defenses

The development of the Standardized Field Sobriety Test (SFST) battery, i.e., Horizontal Gaze Nystagmus, the Walk-and-Turn, and One-Leg Stand tests have given rise to several potential defenses:

- If the officer did not use the SFSTs, the tests should be suppressed because these other tests have not been scientifically validated.
- If the standard battery was used, the SFSTs are based on scientific principles and are subject to admissibility under either the *Frye* standard or the state equivalent of *FRE 702*.
- If the standard battery was used, the tests were not given strictly in accordance with the National Highway Traffic Safety Administration (NHTSA) guidelines and are, therefore, inadmissible.

Issue

In the 1970's, NHTSA contracted with the Southern California Research Institute (SCRI) to study the field sobriety tests then in use, choose the tests that had the greatest potential for demonstrating impairment which could be easily administered in the field, and develop a standardized test battery.

As a result of this study, Horizontal Gaze Nystagmus, the Walk-and-Turn and One-Leg Stand tests were recommended as the most reliable tests to predict when a subject's BAC is over .10. Subsequently, these three tests were adopted by NHTSA as the recommended battery of tests.

In addition to the tests themselves, a protocol was developed for administering the tests, hence the term "standardized." The issue is whether any field sobriety test provides sufficiently reliable information to the arresting officer that he or she can reasonably conclude that the defendant was impaired. The issue is pertinent to both an inquiry on probable cause to arrest as well as the use of FST results as substantive evidence of impairment. The issue is particularly likely to arise when the defendant has refused the chemical tests and performance on the field sobriety tests is the strongest evidence of impairment.

When challenging the standardized test battery, there is an additional issue concerning the "scientific" nature of these tests.

Response

Non-Standardized Tests

Courts have long held that even lay persons can detect and express an opinion about impairment. It is considered common knowledge that alcohol causes physical and behavioral changes that are readily observable.

Some of the familiar signs of impairment include lack of balance, poor coordination, exaggerated movements, poor motor skills, slurred speech, and inability to follow directions. Field sobriety tests merely allow the officer to make observations about these typical signs of impairment.

There are a number of field sobriety tests that officers routinely administer other than the three recommended tests. Although these tests have not been subject to the rigorous examination of the standardized tests, they are still useful in assisting an officer in determining impairment.

The officer should be prepared to testify about their experience in giving the particular tests that were administered, whether he or she has given them to impaired as well as unimpaired persons, the differences between how impaired and unimpaired individuals perform the tests, and how the defendant performed.

Standardized Tests

After thorough and controlled testing, the Horizontal Gaze Nystagmus, Walk-and-Turn, and the One-Leg Stand were identified as the best field tests to determine alcohol impairment over .10.

Defendants have argued that the SFSTs are scientific, and thus subject to a determination of admissibility as scientific evidence under state law. Obviously, SFSTs rely on the well-known fact that alcohol ingestion causes observable physical and mental reactions in the human body. SFSTs are analogous to observations of personal behavior. The scientific principle upon which they are based is neither new nor novel and therefore should not be subject to the *Frye* standard.

Tests Not Administered According To NHTSA Guidelines

Not all law enforcement agencies which have adopted the Standardized Field Sobriety Tests use the NHTSA scoring method. For example, on the Walk-and-Turn test, NHTSA scores the failure to touch heel-to-toe as one clue no matter how many times the defendant fails to touch heel to toe.

If the officer does not administer the test as prescribed, it should be treated as a non-standardized exercise or task and it still provides information to the officer about impairment. The officer should be prepared to explain why the test was not administered in the standardized manner.

Field sobriety tests are based on common knowledge that alcohol ingestion causes observable physical and behavioral reactions. A common defense strategy is to argue that the SFSTs do not show driving impairment.

Be prepared to testify about driving skills. For example, a driver needs to be able to see the red light, process the information that they need to stop, judge the distance they are from the intersection so that they can respond in time, etc. Be prepared to testify about the skills you are looking for the defendant to be able to perform in the field sobriety tests.

Among other things, SFSTs are designed to help assess the defendant's ability to do multiple, simple tasks simultaneously (divided attention tasks), comprehend and follow simple instructions (process information), to maintain physical control, and to judge reaction times.

Substantial Compliance Issue

The Ohio Supreme Court held in *Ohio v. Homan*, 732 N.E.2d 952 (Ohio 2000), that standardized field sobriety tests conducted in a manner that departs from the methods established by NHTSA "are inherently unreliable" and thus inadmissible.

TIP: A brief on the substantial compliance issue is available online at the National Traffic Law Center.

The majority based its decision on a portion of the NHTSA DWI Detection and Standardized Field Sobriety Testing Participant Manual that states "if any one of the standardized field sobriety test elements is changed, the validity is compromised." Obviously, officers should strive to fully comply with NHTSA's guidelines when administering standardized field sobriety tests.

However, should deviations occur, prosecutors should be prepared to argue that any deviation goes to the weight of the evidence, not its admissibility.

This argument is consistent with the preface of the NHTSA SFST Participant Manual, which states that the procedures outlined in the manual describe how SFSTs should be administered under ideal conditions, and that ideal conditions do not always exist in the field. The preface goes on to state that variations from ideal conditions may have some affect on the evidentiary weight given to the results, but this does not necessarily make SFSTs invalid.

Courts in Florida, Georgia, Hawaii, Illinois, Pennsylvania, Tennessee, Texas, Wisconsin and Wyoming have reviewed the admissibility of field sobriety tests that assess physical coordination and have held that deviations in the administration of the tests, including departing from NHTSA's guidelines, should not result in the suppression of test results.

In reaching this conclusion, these courts have found that field sobriety tests, including the walk-and-turn and the one-leg-stand, are simple physical dexterity exercises that can be interpreted by the fact-finder through common sense and experience. Thus, even if NHTSA's guidelines were not substantially complied with when the tests were administered, the tests still have evidentiary value and should be considered by the court.

Incomplete Arrest Report

Defense

Defendant either attempts to show that the officer is lying when they testify about information not in the report or that the officer was intending to arrest defendant from the beginning so never wrote down anything favorable to defendant.

The defense will argue:

- That a truly competent officer would have written down every little detail which supports the arrest.
- The officer's superiors will read the report and the officer knew he or she may have to come to court to testify from the report.
- Wouldn't the officer want it to be as complete as possible?
- The officer has had hundreds of encounters with citizens and probably several other DWI arrests between the time of this arrest and the trial.
- If the information the officer testifies to is not in the report, how can the jurors be sure the officer really remembers?
- Maybe the officer has confused this case with another.
- The officer's failure to note favorable information about the defendant in the report shows that he or she was planning to arrest from the moment they contacted the defendant, therefore, the motives are suspect.

Issue

This defense is an attack upon both the officer's competence and credibility. It attempts to shift the focus from the defendant and their actions to the officer.

Response

The officer must establish the purposes of the arrest report, one of which is to help recall an arrest which took place months before the trial.

TIP: These problems can be minimized with effective preparation.

It is not intended to list everything that happened, only those details which are pertinent to the officer's decision to arrest.

Defense attorneys often point out the absence of signs of impairment, e.g., defendant's speech was not slurred.

Although there are many common traits that DWI drivers share, no defendant will exhibit every impairment indicator. Normally, if the officer failed to note a sign of impairment, it is because they did not see it. An absence of slurred speech does not negate the other signs the officer observed.

Defense counsel also stress that the officer did not write down anything that was favorable to defendant in the report, such as that they parked correctly after being pulled over.

The fact that defendant may have been able to do some things correctly does not mean that they were not impaired. The American Medical Association reports that all persons are impaired at a BAC of .05 or greater whether or not obvious signs of impairment are observable.

TIP: In the pretrial interview, the officer will be asked to clarify any omissions or discrepancies in the report.

The officer should be prepared to be questioned about the report on cross-examination. Ordinarily, the prosecution would not ask about the report on direct examination but wait until the report has been called into question. If it becomes necessary to explain the report, the prosecutor may rehabilitate the officer on redirect.

The following are samples of a few questions that could be asked on redirect:

- When was this report prepared?
- Why do you write a report?
- Have you listed everything related to defendant's arrest in this report? Why not?
- You testified on cross-examination that defendant pulled over to the curb correctly in response to your overhead lights.
- Why isn't that noted in your report?
- Did you take into account what the defendant did correctly in your decision to arrest?

- You testified that the area where the SFSTs were given was well lighted, however, there is nothing in your report which references lighting conditions.
- How do you recall the lighting conditions?
- Do you have an independent recollection of the defendant?
- Do you recall the arrest without your report? How?

The Phantom Driver

Defense

In a single car crash, the most common defense is that defendant was not the driver.

Issue

What evidence is there to substantiate that defendant was the driver in the absence of an eyewitness who can place defendant behind the wheel of the car?

Response

Did defendant tell the officer at the scene that he or she was not the driver or is this a story which has surfaced only at trial? If the defense is raised at trial, the jury is likely to see it as a lie.

Point out in closing that the logical time to raise this issue is at the scene when defendant is being arrested for a crime they did not commit and when the officer had the opportunity to investigate and exonerate defendant.

Whether or not defendant told the officer that they drove, it is important the officer testify regarding the investigation and all evidence that support the conclusion that defendant was the driver.

- Was the defendant still in the car and in what position?
- Is the defendant the owner of the car or the logical person to have been driving, e.g., is it defendant's parents' car?
- Was there any evidence to suggest that another person had been in the car and left the scene, e.g., footprints leading from the scene?
- Were there witnesses who came upon the scene immediately after the crash and did they see anyone else in the area?
- Did defendant identify the other driver?
- Was the driver a friend or some unknown person that defendant met at the bar the night of the crash?
- Is defendant's explanation about the driver consistent with the evidence? Did it make sense?
- Where were the keys, in the ignition or in defendant's possession?
- Was defendant at the scene or had he or she left?
- If defendant was located away from the scene, did he or she lead officers to the scene or indicate knowledge of the location of the crash?
- Did defendant try to leave when the officer arrived?
- What physical evidence exists? For example:
 - What was the position of the driver's seat in relation to defendant's height?
 - Did defendant sustain any abrasions or injury consistent with being the driver, such as bruising from the steering column, seatbelt abrasions, and injuries from broken glass or hitting the windshield?
 - Check for blood, tissue or hair transfers to the vehicle interior.
 - Did defendant have knee injuries from contact with the dashboard?

- Are there items on the passenger seat and/or floor negating the likelihood of a passenger?

Local Legal Issues

This section can be devoted to discussing local defense or prosecution issues.

OPTIONAL SESSION
LIVE ALCOHOL WORKSHOP

OPTIONAL SESSION: LIVE ALCOHOL WORKSHOP

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

- Properly administer the SFST's.
- Properly observe and record subject's performance.
- Properly interpret the subject's performance.

CONTENT SEGMENTS

- A. Procedures
- B. Hands-on Practice
- C. Session Wrap-Up

OPTIONAL SESSION: LIVE ALCOHOL WORKSHOP

Session Objectives

- Properly administer the SFST's.
- Properly observe and record subject's performance.
- Properly interpret the subject's performance.

Procedures

Participants work in teams and will test at least as many drinking volunteers as the team has members.

Each team member will administer one complete series of tests to at least one drinking volunteer.

If time permits, teams will test additional volunteers.

While one participant is administering tests to a volunteer, the other team members will observe and record the volunteer's performance.

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.

Upon termination of this practice segment, monitors will escort the volunteer subjects to the Breath Testing Station.

Hands-on Practice

Session Wrap-Up

Teams report their observations of volunteers.

Instructors notify participants of volunteers' BACs.

TABULATING RESULTS

<u>"Designated Subjects"</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"	_____	_____	_____	_____

OPTIONAL SESSION
VIDEO ALCOHOL WORKSHOP

OPTIONAL SESSION: VIDEO ALCOHOL WORKSHOP

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

- Properly observe and record subject's performance utilizing the standard note taking guide.
- Properly interpret the subject's performance.

CONTENT SEGMENTS

- A. Practical Exercise
- B. Session Wrap-Up

OPTIONAL SESSION: VIDEO ALCOHOL WORKSHOP

Session Objectives

- Properly observe and record subject's performance utilizing the standard note taking guide.
- Properly interpret the subject's performance.

Procedures

Distribute video score sheets, have participants fill in their name and team number.

Advise participants that each subject will be viewed performing all three tests. Pauses are provided between each test to allow participants time to record observed clues.

Participants shall record the number of clues observed, in the boxes located opposite each test.

Advise participants that two views of the subject performing the walk and turn are also provided.

Practical Exercise

Each participant viewing the videos must determine if the subject should or should not be arrested.

Each participant is to prepare a descriptive, written test record on each videoed subject, using the standard note taking guide.

Participants will be informed of the volunteers' BACs at the session "Wrap-Up".

Session Wrap-Up

Participants report their observations of video subjects.

Instructors notify participants of video subjects' BACs.

TABULATING RESULTS

<u>"Designated Subjects"</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"	_____	_____	_____	_____

Standardized Field Sobriety Testing
Option Video
Subject Results

SFST Option Dry Workshop Day 1		
Subjects Name: <u>Bob</u>		BAC: <u>.155</u>
HGN Clues	6	Lack of smooth pursuit present in each eye, Distinct and sustained nystagmus and maximum deviation present in each eye, Onset of nystagmus present in each eye, vertical nystagmus present in each eye.
W & T	2	Missed heel to toe, uses arms for balance.
OLS	0	None
Teaching points/Comments: Left leg is slightly bent, which will improve the subject ability to perform the test without demonstrating clues.		

SFST Option Dry Workshop Day 1		
Subjects Name: <u>Brandon</u>		BAC: <u>.073</u>
HGN Clues	4	Lack of smooth pursuit in each eye, Distinct and sustained nystagmus at maximum deviation present in each eye.
W & T	3	Loses balance during instructional stage, Used arms to balance, Stopped walking.
OLS	0	None
Teaching points/Comments: None		

SFST Option Dry Workshop Day 1		
Subjects Name: <u>Jason</u>		BAC: <u>.000</u>
HGN Clues	0	None
W & T	0	None
OLS	0	None
Teaching points/Comments: None/Placebo		

SFST Option Dry Workshop Day 1		
Subjects Name: Carl		BAC: .134
HGN Clues	5	Lack of smooth pursuit in each eye, Distinct and sustained nystagmus at maximum deviation in each eye, Onset of nystagmus in left eye only.
W & T	4	Lost balance during instructional stage, Uses arms for balance, Stepped off line, Misses heel to toe.
OLS	1	Swaying
Teaching points/Comments: Subject looked beyond stimulus at maximum deviation , not allowing clue to be observed in that eye.		

SFST Option Dry Workshop Day 1		
Subjects Name: Suzanne		BAC: .074
HGN Clues	4	Lack of smooth pursuit in each eye, Distinct and sustained nystagmus at maximum deviation in each eye.
W & T	0	None
OLS	1	Hopping
Teaching points/Comments: Give opportunity to remove shoes, especially those with high heels		

SFST Option Dry Workshop Day 1		
Subjects Name: Christina		BAC: .093
HGN Clues	5	Lack of smooth pursuit in each eye, Distinct and sustained nystagmus at maximum deviation in each eye, Onset of nystagmus in right eye. Vertical nystagmus present.
W & T	3	Stepped off line, Uses arms for balance, Stopped while walking.
OLS	1	Swaying
Teaching points/Comments: None		

SFST Option Dry Workshop Day 1		
Subjects Name: <u>Keith</u>		BAC: <u>.140</u>
HGN Clues	6	Lack of smooth pursuit in each eye, Distinct and sustained nystagmus at maximum deviation present in each eye, Onset of nystagmus present in each eye.
W & T	4	Lost balance during instructional stage, Uses arms for balance, Steps offline, Misses heel to toe.
OLS	3	Sways, Puts foot down, Uses arms for balance, Stopped test
Teaching points/Comments: Consider stopping the psychophysical tests for the safety of the subject.		

SFST Option Dry Workshop Day 1		
Subjects Name: <u>Josh</u>		BAC: <u>.132</u>
HGN Clues	6	Lack of smooth pursuit present in each eye, Distinct and sustained nystagmus at maximum deviation present in each eye, onset of nystagmus present in each eye.
W & T	2	Stepped off line, Misses heel to toe.
OLS	0	None
Teaching points/Comments: None		

OPTIONAL SESSION
OVERVIEW OF DRUG-IMPAIRED DRIVING

OPTIONAL SESSION: OVERVIEW OF DRUG-IMPAIRED DRIVING

Upon successfully completing this module of instruction, the participant will be able to:

- Define the term "drug" in the context of DWI enforcement.
- Name the major categories of drugs.
- Describe the observable signs generally associated with the major drug categories.
- Describe the ARIDE training program.

Content Segments

- A. Drug Categories and Their Observable Effects
- B. Advanced Roadside Impaired Driving Enforcement (ARIDE) Overview

OPTIONAL SESSION: OVERVIEW OF DRUG-IMPAIRED DRIVING

Session Objectives

- Define the term "drug" in the context of DWI enforcement.
- Name the major categories of drugs.
- Describe the observable signs generally associated with the major drug categories.
- Describe the ARIDE training program.

Definition of "Drug"

The word "drug" is used in many different ways, by many different people.

The corner druggist and the U.S. Drug Enforcement Administration are both concerned with "drugs", but they don't have exactly the same thing in mind when they use that word. And neither the druggist nor the DEA have the same perspective as the DWI enforcement officer.

For our purposes, a "drug" is any substance that when taken into the human body, can impair the ability of the person to operate a vehicle safely.

This definition excludes some substances that physicians consider to be drugs. (Examples: nicotine; caffeine)

This definition includes some substances that physicians don't usually think of as drugs. (Examples: model airplane glue; paint)

Drug Categories and Their Observable Effects

CNS Depressants

CNS Depressants slow down the operations of the brain, and usually depress the heartbeat, respiration, and many other processes controlled by the brain. The most familiar CNS Depressant is alcohol. Other CNS Depressants include:

- Barbiturates (such as Secobarbital and Pentobarbital)
- Non-Barbiturates (GHB - Gama hydroxy Butyrate and Soma)
- Anti-Anxiety Tranquilizers (such as Valium, Librium, Xanax, and Rohypnol)
- Anti-Depressants (such as Prozac and Elavil)
- Muscle relaxants and many other drugs.

CNS Depressants usually are taken orally, in the form of pills, capsules, liquids, etc.

In general, people under the influence of any CNS Depressant look and act like people under the influence of alcohol.

General Indicators of CNS Depressant Influence

- "Drunken" behavior and appearance
- Uncoordinated
- Drowsy
- Sluggish
- Disoriented
- Thick, slurred speech

Eye Indicators of CNS Depressant Influence

- Horizontal gaze nystagmus usually will be present.
- Vertical nystagmus may be present (with high doses).
- Pupil size usually will be normal, except that Methaqualone and Soma will cause pupil dilation.

CNS Stimulants

CNS Stimulants accelerate the heart rate, respiration and many other processes of the body.

The two most widely abused kinds of CNS Stimulants are cocaine and methamphetamines. Cocaine is made from the leaves of the coca plant. Methamphetamines are chemically produced (manufactured) drugs.

Cocaine abusers may take the drug

- by "snorting"
- by smoking (freebase, or "Crack")
- by injection
- orally

Abusers of Methamphetamines may take their drugs:

- by injection
- orally
- by "snorting"
- or smoked (i.e., "ice")

People under the influence of CNS Stimulants tend to be hyperactive, indicated by nervousness, extreme talkativeness and an inability to sit still. They also are usually unable to concentrate, or to think clearly for any length of time.

General Indicators of CNS Stimulant Influence

- Restlessness
- Talkative
- Excitation
- Euphoria
- Exaggerated reflexes
- Loss of appetite
- Anxiety
- Grinding teeth (bruxism)
- Redness to nasal area (if "snorting")
- Runny nose (if "snorting")
- Body tremors

Eye Indicators of CNS Stimulant Influence:

- Neither horizontal nor vertical nystagmus will be observed.
- The pupils generally will be dilated.

Hallucinogens

Hallucinogens are drugs that affect a person's perceptions, sensations, thinking, self awareness and emotions.

One common type of hallucination caused by these drugs is called synesthesia, which means a transposing of the senses.

- Sounds, for example, may be transposed into sights.
- Sights, for example, may be transposed into odors or sounds.

Some hallucinogenic drugs come from natural sources.

- Peyote is a hallucinogen found in a particular specie of cactus.
- Psilocybin is a hallucinogen found in a number of species of mushroom.

Other hallucinogens are synthetically manufactured:

- LSD (Lysergic Acid Diethylamide)
- MDA (3,4-Methylenedioxyamphetamine)
- MDMA/Ecstasy (3,4-Methylenedioxymethamphetamine)
- Many others.

Hallucinogen abusers usually take their drugs orally; however, some hallucinogens can be smoked, or injected or "snorted".

General Indicators of Hallucinogen Influence

- Hallucinations
- Dazed appearance
- Body tremors
- Uncoordinated
- Perspiring
- Disorientation
- Paranoia
- Difficulty in speech
- Nausea
- Piloerection (goose bumps)

Eye Indicators of Hallucinogen Influence

- Neither horizontal nor vertical nystagmus will be present.
- The pupils usually will be noticeably dilated.

Dissociative Anesthetics

Examples include:

- Dextromethorphan
- PCP
- Ketamine

Dextromethorphan (DXM) is the active ingredient in over-the-counter cough medicine such as Robitussin, Coricidin Cough and Cold, and Dimetapp. DXM is typically abused by school age children and teenagers by concentrated or multiple dosages to achieve impairment. DXM can be found in liquid and pill form. With high doses of DXM, the user may experience hallucinogenic effects.

PCP is a synthetic drug, that was first developed as an intravenous anesthetic.

Because PCP produces very undesirable side effects, it is no longer legally manufactured. However, an analog (chemical cousin) Ketamine is still being legally manufactured and available.

However, it is easy to manufacture:

- The formula for making PCP and PCP analogs have been widely publicized.
- The manufacturing process involves readily available chemicals.

Some PCP and Ketamine users smoke the drug, by using it to adulterate tobacco, marijuana, or various other substances.

Dissociative Anesthetics can also be taken orally, by injection, or inhaled.

General Indicators of Dissociative Anesthetic Influence

- Warm to the touch
- Perspiring
- Blank stare
- Repetitive speech
- Incomplete verbal responses
- Confused
- Muscle rigidity
- Possibly violent & combative

Eye Indicators of Dissociative Anesthetic Influence

- Horizontal gaze nystagmus generally will be present, often with very early onset and very distinct jerking.

- Vertical nystagmus generally will be present.
- Pupil size usually will be normal.

Narcotic Analgesics

Narcotic Analgesics include a large number of drugs that share three important characteristics.

- They will relieve pain.
- They will produce withdrawal signs and symptoms, when the drug is stopped after chronic administration.
- They will suppress the withdrawal signs and symptoms of chronic morphine administration.

Some narcotic analgesics are natural derivatives, some are synthetic.

- Morphine
- Heroin
- Codeine
- Demerol
- Methadone
- Fentanyl
- OxyContin
- Many Others.

Some narcotic analgesics (such as heroin) usually are injected. Others (such as codeine) usually are taken orally.

General Indicators of Narcotic Analgesic Influence

- "On the nod"
- Droopy eyelids
- Depressed reflexes
- Dry mouth
- Facial itching
- Low, raspy speech
- Fresh puncture marks may be evident

Eye Indicators of Narcotic Analgesic Influence

- Neither horizontal nor vertical nystagmus will be present.
- Pupils generally will be constricted.

Inhalants

Inhalants are breathable chemicals that produce mind-altering effects. Inhalants generally fall into one of three categories:

 Volatile Solvent
 Aerosol
 Anesthetic Gas

A wide variety of familiar household items are sometimes abused as inhalants.

Certain anesthetics also may be abused as inhalants.

General Indicators of Inhalant Influence

- Disorientation
- Slurred speech
- Residue of substance on face, hands, clothing
- Confusion
- Possible nausea

Eye Indicators of Inhalant Influence

- Horizontal gaze nystagmus generally will be present.
- Vertical nystagmus may be present (especially with high doses).
- Pupil size generally will be normal, but anesthetic gas may dilate.

Cannabis

Cannabis is the category that includes the various products of the Cannabis Sativa plant.

- Marijuana
- Hashish
- Hash Oil

Cannabis products generally are smoked, although they also can be ingested orally.

General Indicators of Cannabis Influence

- Marked reddening of the Conjunctivae
- Body tremors
- Odor of marijuana
- Disoriented
- Relaxed inhibitions
- Difficulty in dividing attention

Eye Indicators of Cannabis Influence

- Neither horizontal nor vertical nystagmus will be present.
- Pupil size generally will be dilated, but may be normal.

Advanced Roadside Impaired Driving Enforcement (ARIDE) Overview

Many law enforcement officers are trained in Standardized Field Sobriety Testing (SFST) and use the skills gained in the course as part of their overall enforcement of DWI laws.

The ARIDE course is not developed to act as a substitute for the DEC program and will not qualify or certify an individual as a DRE.

This course is intended to bridge the gap between the SFST and DRE course and to provide a level of awareness to the participants, both law enforcement and other criminal justice professionals, in the area of drug impairment in the context of traffic safety.

Based on that premise, the ARIDE course was developed with the following goals in mind.

Course Goal

This course will train law enforcement officers to observe, identify, and articulate the signs of impairment related to drugs, alcohol or a combination of both in order to reduce the number of impaired driving incidents, serious injury, and fatal crashes.

This course will train other criminal justice professionals (prosecutors, toxicologists, etc.) to:

- Understand the signs of impairment related to drugs, alcohol, or a combination of both.
- To enable them to effectively work with law enforcement in order to reduce the number of impaired driving incidents, serious injury, and fatal crashes.

NHTSA has promoted high visibility enforcement efforts among law enforcement agencies. As a result of this effort, several things happened:

- Prosecutors were left behind in technology advances and training.
- Overloaded the criminal court system.
- Delivered poorly developed cases for prosecution.
- Short cuts were taken that jeopardized court cases.

Criminal justice professionals such as Prosecutors, Toxicologists, Probation and Parole Officers must also understand the impaired driving detection process in order to support enforcement efforts, which will increase the probability of successful prosecution and adjudication.

The ARIDE course will train participants to:

- Define and describe the relationship of drugs to impaired driving incidents.
- Demonstrate, articulate, and properly administer the SFSTs proficiently.
- Observe, identify, and articulate the observable signs of drug impairment with the established seven drug categories associated with the DEC program.
- Recognize possible medical conditions, which may mimic the observable signs of drug impairment.
- Identify, document and describe indicators observed and information obtained related to impairment which leads to the arrest/release decision.
- Articulate, through testimony, impairment related to alcohol, drugs, or a combination of both, based on a complete investigation.

The ARIDE course is divided into sessions, which are designed to provide the participant with an overview of drug impaired driving.

- Introduction & Overview of Drugs and Highway Safety
- SFST Update and Review
- SFST Proficiency Exam
- Drugs in the Human Body
- Observation of the Eyes and Other Sobriety Tests for Impairment.
- Seven Major Drug Categories
- Effects of Drug Combinations
- Pre and Post Arrest Procedures
- Legal Issues Associated with Impaired Driving

The course is designed to serve as a bridge between the SFST and DEC Programs.

Often times officers come in contact with the drug impaired driver.

There are many things that could be happening:

- The officer is unfamiliar with the indicators of drug impairment, therefore does nothing with the subject.
- Recognizes there is something wrong with the driver, but does not know how to address the issue.
- Allows subject to continue on their way.
- Drives the subject home or allows the subject to ride home with another individual.
- Not familiar with the resources available to them.