DAY 1 AFTERNOON: HANDOUTS

THE DUI ARREST: STANDARDIZED FIELD SOBRIETY TESTING AND BAC DETERMINATION
Basic DWI Statute

It is unlawful for any person to...

- operate or be in actual physical control of ...
- any vehicle ...
- within this state ...
- while under the influence of alcohol and/or any drug.

Key Features of Implied Consent

- Any person who operates a motor vehicle upon the public highways of this state …
- Shall be deemed to have given consent to a chemical test …
- For the purpose of determining the alcohol and/or drug content of that person’s blood …
- When arrested for any acts alleged to have been committed while the person was operating or in actual physical control of a vehicle while under the influence of alcohol and/or any drug.
Legal Presumptions

_____ or more...
Presumed under the influence
Less than _____...
Presumed not under the influence
At least _____ but below _____
No presumption

Key Point:

Chemical test evidence is PRESUMPTIVE, Not Conclusive

Question Number 1

Is it possible for a person whose BAC is above the state's per se or presumptive level to be acquitted of DWI?
Question Number 2

Is it possible for a person whose BAC was below the state's per se or presumptive level to be convicted of DWI?

Illegal “Per Se” Statute

Is it unlawful for any person to...

- operate or be in actual physical control of...
- any vehicle...
- within this state...
- while having a BAC at or above state’s level.
Phase One: Vehicle In Motion

**Initial Observation of the Vehicle in Operation**

**Should I Stop the Vehicle?**

**Observation of the Stop**

Common Symptoms of Alcohol Influence

**Blood Alcohol Concentration**

- 0.03: Slowed Reaction
- 0.05: Increased Risk Taking
- 0.08: Impaired Vision
- 0.10: Poor Coordination

Blood Alcohol Concentration
Most Common and Reliable Initial Indicators of DWI

- Turning with wide radius.
- Almost striking object or vehicle.
- Weaving.
- Straddling center or lane marker.
- Appearing to be impaired.
- Driving on other than designated roadway.
- Driving into opposing or crossing traffic.
- Slow response to traffic signals.
- Turning abruptly or illegally.
- Stopping inappropriately.

- Accelerating/decelerating rapidly.
- Headlights off.
- Swerving.
- Following too closely.
- Drifting.
- Speed slower than 10mph below limit.
- Stopping without cause in traffic lane.
- Tires on center or lane marker.
- Breaking erratically.
- Signaling inconsistent with driving.

Motorcycle DUI Detection Guide

Excellent Cues (50% or Greater Probability)

- Drifting during turn or curve
- Trouble with dismount
- Trouble with balance at a stop
- Turning problems (e.g., unsteady, sudden corrective, late breaking, improper lean angle)
- Inattentive to surroundings
- Inappropriate or unusual behavior (e.g., carrying or dropping object, urinating at roadside, disorderly conduct, etc.)
- Weaving

Good Cues (30 to 50% Probability)

- Erratic movements while going straight
- Operating without lights at night
- Recklessness
- Following too closely
- Running stop light or sign
- Evasion
- Travelling wrong way

Safe driving demands the ability to divide attention among numerous simultaneous tasks
Vehicle in Motion

What Do You See?

Moving Violation?
Equipment Violation?
Other Violation?
Unusual Operation?
Anything Else?

Phase One: Task One
Initial Observation of Vehicle Operation

Requires the Ability to:
1. Recognize evidence of alcohol and/or other drug influence
2. Describe that evidence clearly and convincingly

Vehicle in Motion

What Do You See?

Tries to Flee?
No Response?
Slow Response?
Abrupt Weave?
Sudden Stop?
Strikes Curb?
New Violations?
Anything Else?
Phase One: Task Two
Observation of the Stop

Requires the Ability to:
1. Recognize evidence of alcohol and/or other drug influence
2. Describe that evidence clearly and convincingly
Phase Two: Personal Contact

Interview and Observation of the Driver

Should Driver Exit?

Observation of the Exit

Personal Contact

What Do You See?

Bloodshot Eyes?
Soiled Clothing?
Fumbling Fingers?
Alcohol Containers?
Drug and drug paraphernalia?
Bruises, Bumps, Scratches?
Unusual Actions?

What Do You Hear?

Slurred Speech?
Admission of Drinking?
Inconsistent Responses?
Unusual Statements?
Abusive Language?
Anything Else?
Personal Contact

What Do You Smell?

Alcoholic Beverage?
“Cover-Up” Odors?
Marijuana?
Other Unusual Odors?

Phase Two: Task One

Face-to-Face Observation and Interview of Suspect

Requires the Ability to:
1. Recognize the sensory evidence of alcohol and/or other drug influence
2. Describe the evidence clearly and convincingly

Interview/Questioning Techniques

- Simultaneously request license and registration
- Pose distracting/interrupting questions during license search
- Pose unusual questions to verify license information
The Exit

What Do You See?

Angry, Unusual Reaction?
Can’t Follow Directions?
Can’t Open Door?
Leaves Car in Gear?
“Climbs” Out of Car?
Leans Against Car?
Keeps Hand on Car?
Anything Else?

Phase Three:
Pre-Arrest Screening
Phase Three: Pre-Arrest Screening

Field Sobriety Testing  Preliminary Breath Testing

Should I Arrest?

Psychophysical Tests

Methods of examining mental and/or physical impairment

Nystagmus:
Involuntary Jerking of the Eyes
“Divided Attention”

...Concentrating on more than one thing at a time (mental tasks and physical tasks)

Typical Simultaneous Capabilities Required for Driving

• Information Processing
• Short-term Memory
• Judgment/Decision Making
• Balance
• Quick Reactions
• Clear Vision
• Small-Muscle Control
• Coordination of Limbs

Simplicity

Is it Reasonable to Assume That, If Sober...

Anyone Like The Suspect

You  The Judge
The Jurors  The Suspect

...Would “Pass” the Test?
Walk and Turn
(Divided Attention Test)

- Instructions Stage
- Walking Stage

One Leg Stand
(Divided Attention Test)

- Instructions Stage
- Balance and Counting Stage

Basic Purpose of Preliminary Breath Testing

Demonstrate Association of Alcohol with the Observable Evidence of the Suspect’s Impairment
Advantages of PBT

- Corroborate other evidence
- Confirm officer’s judgment
- Confirm alcohol as cause of impairment
- Help establish probable cause for DWI arrest

Possible Factors Affecting Preliminary Breath Tests

- Breath sample composition
- Breath sample cooling
- Residual mouth alcohol
- Contaminants in the breath
- Radio frequency interference

The Arrest Decision is Based on All Evidence Accumulated During All Three Detection Phases

Initial Observation of Vehicle Operation

Face-to-Face Observation and Interview

Observation of the Exit

Psychophysical Tests

Preliminary Breath Tests

Observation of the Stop
Overview: Development and Validation

NHTSA Research Began in 1975 in California With Three Final Reports Being Published:

1. California: 1977 (lab study only)

2. California: 1981 (lab/field study)

3. Maryland, Washington, DC, Virginia, North Carolina: 1983 (field study only)
Original Research Objectives

• To evaluate currently used physical coordination tests to determine their relationship to intoxication and driving impairment.

• To develop more sensitive tests that would provide more reliable evidence of impairment.

• To standardize the tests and observations.

Volunteers were Subjected to Six Tests:

1. One-leg stand
2. Finger to nose
3. Finger count
4. Walk and turn
5. Tracing (a paper and pencil exercise)
6. Nystagmus (called alcohol gaze nystagmus in final report)

Laboratory Test Data

Results

• HGN by itself was 77% accurate.

• Walk and Turn was 68% accurate.

• One Leg Stand was 65% accurate.

• It would be possible to combine the results of HGN and Walk and Turn and be 80% accurate.
“Standardized” Elements

- Standardized Administrative Procedures
- Standardized Clues
- Standardized Criteria

Importance of Large Scale Field Validation Study

- First significant assessment of the workability of the standardized tests under actual enforcement conditions.
- First time completely objective clues and scoring criteria had been defined for the tests.
- Results of the study validated the SFSTs.

SFST Field Validation Studies

- Colorado 1995
- Florida 1997
- San Diego, California 1998
**Colorado Field Validation Study of SFST**

- First full field validation study using SFST experienced law enforcement personnel.
- 93% correct arrest decision based on three-test battery (HGN, WAT, OLS).

**Florida Field Validation Study of SFST**

- 95% correct arrest decision based on three-test battery (HGN, WAT, OLS).
- Validated SFST’s at 0.08 BAC and above.

**San Diego Field Validation Study of SFST**

- 91% correct arrest decision for 0.08 BAC and above using three-test battery (HGN, WAT, OLS).
- HGN is still most reliable of three-test battery and supports arrest decisions at 0.08 BAC.
Horizontal Gaze Nystagmus

Involuntary jerking of the eyes occurring as the eyes gaze to the side.

Categories of Nystagmus

• Vestibular
  - Rotational
  - Post-rotational
  - Caloric
  - Positional alcohol nystagmus

• Neural
  - Optokinetic
  - Physiological
  - Gaze
    - Horizontal
    - Vertical
    - Resting

• Pathological disorders and diseases

Administrative Procedures

1. Eyeglasses
2. Verbal instructions
3. Position object (12-15 inches) (30-38 cm)
4. Pupil size and resting nystagmus
5. Equal tracking
Administrative Procedures

6. Check for lack of smooth pursuit

7. Check for distinct and sustained nystagmus at maximum deviation

8. Check for onset of nystagmus prior to 45 degrees

9. Total the clues

10. Check for Vertical Gaze Nystagmus

Check each eye independently beginning with the suspect’s left and compare.

Three Clues of Horizontal Gaze Nystagmus

• Lack of smooth pursuit.

• Distinct and sustained nystagmus at maximum deviation.

• Onset of nystagmus prior to 45 degrees.

Clue Number 1

Lack of smooth pursuit
Clue Number 2

Distinct and sustained nystagmus at maximum deviation

Clue Number 3

Onset of nystagmus prior to 45 degrees
**Horizontal Gaze Nystagmus Test Criterion**

4 or more clues indicates BAC above 0.10 (77% accurate)

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**Vertical Gaze Nystagmus**

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**Walk and Turn**

*(Divided Attention Test - Mental Task and Physical Task)*

- Instructions Stage
- Walking Stage
Administrative Procedures

1. Verbal Instructions:
   - Assume heel-toe stance
   - Arms down at sides
   - Don't start until told

2. 9 heel-toe Steps, Turn, 9 heel-toe Steps

3. Turn Procedures:
   - Turn around on line
   - Several small steps

4. While Walking:
   - Keep watching feet
   - Arms down at sides
   - Count steps out loud
   - Don't stop during walk

Walk and Turn Test Clues

1. Can’t balance during instructions

2. Starts too soon

3. Stops while walking

4. Doesn't touch heel-toe

Walk and Turn Test Clues

5. Steps off line

6. Uses arms to balance

7. Improper turn (or loses balance on turn)

8. Wrong number of steps

Note: If suspect can't do the test, record observed clues and document the reason for not completing the test.
Walk and Turn Test Criterion

2 or more clues indicates BAC above 0.10 (68% accurate)

One-Leg Stand
(Divided Attention Test - Mental Task and Physical Task)

• Instructions Stage
• Balance and Counting Stage

Administrative Procedures

Instructions Stage:
- Stand straight, feet together
- Keep arms at sides
- Maintain position until told otherwise
Administrative Procedures

Balance and Counting Stage:
- Raise one leg, either leg
- Keep raised foot approximately six inches (15 cm) off ground, foot parallel to the ground
- Keep both legs straight
- Keep eyes on elevated foot
- 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

Note: It’s important for the officer to time the 30 second count for the test.

One-Leg Stand Test Clues

- Sways while balancing
- Uses arms to balance
- Hops
- Puts foot down

Note: If suspect can’t do the test, record observed clues and document the reason for not completing the test.

One-Leg Stand Test Criterion

2 or more clues indicates BAC above 0.10 (65% accurate)
## Drug Influence Signs and Symptoms

<table>
<thead>
<tr>
<th></th>
<th>CNS DEPRESSANTS</th>
<th>INHALANTS</th>
<th>PCP</th>
<th>CANNABIS</th>
<th>CNS STIMULANTS</th>
<th>HALLUCINOGENS</th>
<th>NARCOTIC ANALGESICS</th>
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<tbody>
<tr>
<td><strong>Horizontal Gaze</strong></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Nystagmus</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
<td>Not Present</td>
<td>Not Present</td>
<td>Not Present</td>
<td>Not Present</td>
</tr>
<tr>
<td><strong>Vertical Nystagmus</strong></td>
<td>Possibly Present</td>
<td>Possibly Present</td>
<td>Usually Present</td>
<td>Not Present</td>
<td>Not present</td>
<td>Not Present</td>
<td>Not Present</td>
</tr>
<tr>
<td><strong>Lack of Convergence</strong></td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
<td>Present</td>
<td>Not Present</td>
<td>Not Present</td>
<td>Not Present</td>
</tr>
<tr>
<td><strong>Pupil Size</strong></td>
<td>Within Normal Range</td>
<td>Normal Range or Dilated</td>
<td>Within Normal Range</td>
<td>Dilated But May Be Normal</td>
<td>Dilated</td>
<td>Dilated</td>
<td>Constricted</td>
</tr>
<tr>
<td><strong>Reaction to Light</strong></td>
<td>Slowed</td>
<td>Slowed</td>
<td>Normal</td>
<td>Normal</td>
<td>Slowed</td>
<td>Normal</td>
<td>Little or No Visible Reaction</td>
</tr>
<tr>
<td><strong>Pulse Rate</strong></td>
<td>Below Normal</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Below Normal</td>
</tr>
<tr>
<td><strong>Blood Pressure</strong></td>
<td>Below Normal</td>
<td>Depends on Substance</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Below Normal</td>
</tr>
<tr>
<td><strong>Body Temperature</strong></td>
<td>Within Normal Range</td>
<td>Above, Below or Normal</td>
<td>Above Normal</td>
<td>Within Normal Range</td>
<td>Above Normal</td>
<td>Above Normal</td>
<td>Below Normal</td>
</tr>
</tbody>
</table>

### General Indicators
- **Uncoordinated Disoriented**
- **Sluggish**
- **Thick, slurred speech**
- **Drunken behavior**
- **Gait ataxia**
- **Drowsiness**
- **Droopy Eyes**
- **Fumbling**

**Note:** with Methaqualone, pulse will be elevated and body tremors will be evident. Alcohol and Quaaludes elevate pulse. Soma and Quaaludes dilate pupils.

- **Residue of substance around nose & mouth**
- **Odor of substance**
- **Possible nausea**
- **Slurred speech**
- **Disorientation**
- **Confusion**
- **Bloodshot, watery eyes**
- **Lack of muscle control**
- **Non-communicative**
- **Flushed face**
- **Non-communicative intense headaches**

**Note:** Anesthetic gases cause below normal blood pressure; volatile solvents and aerosols cause above normal blood pressure.

- **Perspiring**
- **Warm to the touch**
- **Blank stare**
- **Very early angel**
- **HGN onset**
- **Difficulty in speech**
- **Incomplete verbal responses**
- **Repetitive speech**
- **Increased pain threshold**
- **Cyclic behavior**
- **Confused agitated**
- **Hallucinations**
- **Possibly violent & combative**
- **Chemical odor**
- "Moon walking"

- **Marked reddening of conjunctiva**
- **Odor of marijuana**
- **Marijuana debris in mouth**
- **Body tremors**
- **Relaxed inhibitions**
- **Increased appetite**
- **Impaired perception of time & distance**
- **Disorientation**
- **Possible paranoia**

- **Restlessness**
- **Body tremors**
- **Euphoria**
- **Talkative exaggerations**
- **Receptive reflexes**
- **Anxiety**
- **Grinding teeth**
- **Redness to nasal area**
- **Runny nose**
- **Loss of appetite**
- **Insomnia**
- **Increased alertness**
- **Dry mouth**

- **Irritability**
- **Dazed appearance**
- **Body tremors**
- **Synesthesia**
- **Hallucinations**
- **Paranoia**
- **Uncoordinated nausea**
- **Difficulty in speech**
- **Perspiring**
- **Poor perception of time & distance**
- **Memory loss**
- **Disorientation**
- **Flashbacks**

**Note:** With LSD, piloerection may be observed; goose bumps, hair standing on end.

- **Droopy eyelids**
- "(ptosis)
- "On the nod"
- **Depressed reflexes**
- **Low, raspy, slow speech**
- **Dry mouth**
- **Facial itching**
- **Euphoria**
- **Fresh puncture marks**
- **Nausea**
- **Track marks**

**Note:** Tolerant users exhibit relatively little psychomotor impairment.
DUI ARREST FLOW CHART

Police arrests offender for DUI and issues a Law Enforcement Sworn Report /Statutory Summary Suspension (SSS)

Offender goes to Court for DUI; also has right to contest the summary suspension in a separate hearing.

If found guilty of DUI, judge orders offender to get an evaluation

DASA provider completes evaluation

Offender returns to judge for sentencing.

✓ If convicted, then driving privileges are revoked. If sentenced to court supervision, then offender can resume driving after termination of summary suspension.
✓ If offender contests summary suspension at an Implied Consent hearing, then judge can rescind the Statutory Summary Suspension, but if not, the client will lose driving privileges 46 days after arrest.
✓ If offender is a first offender, they can accept a monitoring device driving permit from the Secretary of State BAIID Division.
✓ If offender is not a first offender, then offender cannot drive during the summary suspension.
✓ If the judge rescinds the Statutory Summary Suspension, then the summary suspension is removed from driving record and offender is free to resume driving, unless convicted/revoked for the DUI, in which case the offender will have to go to the Secretary of State for driving relief.
✓ Offender follows judge’s orders for treatment, risk education, etc.
APPENDIX A

Standardized Field Sobriety Testing

The Standardized Field Sobriety Test (SFST) is a battery of three tests administered and evaluated in a standardized manner to obtain validated indicators of impairment and establish probable cause for arrest. These tests were developed as a result of research sponsored by the National Highway Traffic Safety Administration (NHTSA) and conducted by the Southern California Research Institute. A formal program of training was developed and is available through NHTSA to help law enforcement officers become more skillful at detecting DWI suspects, describing the behavior of these suspects, and presenting effective testimony in court. Formal administration and accreditation of the program is provided through the International Association of Chiefs of Police (IACP). The three tests of the SFST are:

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

These tests are administered systematically and are evaluated according to measured responses of the suspect.

HGN Testing

Horizontal Gaze Nystagmus is an involuntary jerking of the eye that occurs naturally as the eyes gaze to the side. Under normal circumstances, nystagmus occurs when the eyes are rotated at high peripheral angles. However, when a person is impaired by alcohol, nystagmus is exaggerated and may occur at lesser angles. An alcohol-impaired person will also often have difficulty smoothly tracking a moving object. In the HGN test, the officer observes the eyes of a suspect as the suspect follows a slowly moving object such as a pen or small flashlight, horizontally with his or her eyes. The examiner looks for three indicators of impairment in each eye: if the eye cannot follow a moving object smoothly, if jerking is distinct when the eye is at maximum deviation, and if the angle of onset of jerking is within 45 degrees of center. If, between the two eyes, four or more clues appear, the suspect likely has a BAC of 0.08 or greater. NHTSA research found that this test allows proper classification of approximately 88 percent of suspects (Stuster and Burns, 1998). HGN may also indicate consumption of seizure medications, phencyclidine, a variety of inhalants, barbiturates, and other depressants.

Walk and Turn

The Walk-and-Turn test and One-Leg Stand test are "divided attention" tests that are easily performed by most
unimpaired people. They require a suspect to listen to and follow instructions while performing simple physical movements. Impaired persons have difficulty with tasks requiring their attention to be divided between simple mental and physical exercises.

In the Walk-and-Turn test, the subject is directed to take nine steps, heel-to-toe, along a straight line. After taking the steps, the suspect must turn on one foot and return in the same manner in the opposite direction. The examiner looks for eight indicators of impairment: if the suspect cannot keep balance while listening to the instructions, begins before the instructions are finished, stops while walking to regain balance, does not touch heel-to-toe, steps off the line, uses arms to balance, makes an improper turn, or takes an incorrect number of steps. NHTSA research indicates that 79 percent of individuals who exhibit two or more indicators in the performance of the test will have a BAC of 0.08 or greater (Stuster and Burns, 1998).

One Leg Stand

In the One-Leg Stand test, the suspect is instructed to stand with one foot approximately six inches off the ground and count aloud by thousands (One thousand-one, one thousand-two, etc.) until told to put the foot down. The officer times the subject for 30 seconds. The officer looks for four indicators of impairment, including swaying while balancing, using arms to balance, hopping to maintain balance, and putting the foot down. NHTSA research indicates that 83 percent of individuals who exhibit two or more such indicators in the performance of the test will have a BAC of 0.08 of greater (Stuster and Burns, 1998).

Combined Measures

When the component tests of the SFST battery are combined, officers are accurate in 91 percent of cases, overall, and in 94 percent of cases if explanations for some of the false positives are accepted (Stuster and Burns, 1998).

The original NHTSA research found different accuracies for the SFST Battery than reported in the more recent study. Tharp, Burns, and Moskowitz (1981) reported accuracies of 77 percent for the HGN, 68 percent for the Walk and Turn, and 65 percent for the One Leg Stand components; 81 percent of officers’ arrest decisions at 0.10 BAC were correct when all three measures were combined. In contrast, Stuster and Burns (1998) found greater accuracies in making arrest decisions on the basis of SFST results in their study at 0.08 percent BAC, as described previously and summarized in the following table.

Comparison of SFST Accuracies 1981 vs. 1998

Study: Combined Tharp, Burns, & Moskowitz (1981)

- BAC: 0.10
- HGN: 77%
- WAT: 8%
- OLS: 65%
- Combined: 81%
Study: Stuster & Burns (1998)

- BAC: 0.08
- HGN: 88%
- WAT: 79%
- OLS: 83%
- Combined: 91%

The greater component and overall accuracies found during the 1998 study are attributable to 17 years of law enforcement experience with the SFSTs since the original study and a lower criterion BAC than in the original study (i.e., 0.08 vs. 0.10 percent).