



DWORMAN LAW

EMPOWERING JUSTICE AND DEFENDING YOUR RIGHTS

DRIVING UNDER
THE INFLUENCE

STANDARDIZED FIELD SOBRIETY TESTS



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Standardized Field Sobriety Tests are used throughout the state of Arizona, and really the vast majority of the United States, when a police officer suspects a driver of impaired driving, or actual physical control. I will give a detailed explanation of these three tests in this ebook.



In order to establish the basis for a DUI arrest (probable cause), a police officer will often attempt to administer the three standardized field sobriety tests. Standardized Field Sobriety Tests (SFST) are best described as psycho-motor tests. Said another way, these are “*divided attention*” tests. Some consider these tests to be objective and a standardized measure of behavior. They focus on three elements:

- **Objectivity:** aspects of a test are based on objective criteria, such as the scoring or the interpretation of the score, and are not influenced by the subjective opinion of the examiner.
- **Standardization:** a uniformity of procedure in the administration, scoring, and interpretation of the test and its results.
- **Behavior Sample:** a representative sample of a person’s behavior from which one can draw inferences and hypotheses.

It should be noted that tests like the Field Sobriety Tests are not a mental x-ray; they do not reveal hidden mental states of mind. To be valid, psychological tests have to meet three types of criteria:

- Reliability.
- Standardization.
- Validity.





These types of psycho-motor, or “*divided attention*” tests are used by a wide variety of professionals, including psychologists, special education teachers, guidance counselors, psychiatrists, nurses, engineers, etc. Ideally, psychophysical tests should require an evaluation of a person’s appearance, condition, and ability to follow instruction. Also, issues such as balance and coordination should be included. These are known as divided attention tests, because they require the subject to focus on more than one thing at a time. Scientific studies have shown that a person under the influence of alcoholic beverages may be able to perform one test, but rarely two.

The National Highway Traffic Safety Administration (NHTSA), with cooperation and assistance from the law enforcement community, conducted extensive research that ultimately produced a battery of three standardized tests:

1. Horizontal gaze nystagmus (HGN);
2. Walk-and-turn (WNT);
3. One-leg-stand (OLS).

These tests are used by police officers in detecting impairment.

The origins of this program lie in laboratory and field studies conducted by the Southern California Research Institute; the tests were originally developed by the LAPD. In 1986, the Advisory Committee on Highway Safety of the International Association of Chiefs of Police (IACP) passed a resolution that recommended law enforcement agencies adopt and implement the field sobriety testing developed by the NHTSA. As the program developed over time, it became apparent that nationally accepted standards should be enacted.

HORIZONTAL GAZE NYSTAGMUS (HGN)

In Arizona (and again, the vast majority of country), generally the first test often given is what is known as the “horizontal gaze nystagmus” (HGN) test. Nystagmus sounds like a complicated word but it just means an involuntary jerking of the eyes. Also, the person experiencing the nystagmus is not aware that the jerking is occurring. The HGN test is based upon the idea that involuntary jerking of the eyes becomes noticeable when a person is impaired by alcohol. The theory is that the higher the blood alcohol concentration goes, the sooner the eyes will jerk as they move to the side of the person’s head. Many police officers consider the HGN test to be the most reliable test. Before giving the HGN test, police will look for signs of possible medical impairment including pupil size, resting nystagmus, and tracking ability.

When administering the HGN test, police officers usually have the person follow the motion of a small pen with the eyes only, nothing else. The tip of something that contrasts with the background is used as the stimulus. When administered, the police start with the left eye, looking for three specific clues. As the eye moves from side to side, the officer is checking to see if the eye moves smoothly or whether it jerks noticeably. The theory is based on the idea that as people become more impaired by alcohol, the eyes show a lack of smooth pursuit as they move from side to side. When the eyes move as far to one side as possible, the police officer is trying to see if the eyes jerk distinctly which is a clue of impairment. Also, the officer is looking to see if the eyes jerk prior to a 45-degree angle, because onset of nystagmus prior to 45-degrees is another sign of impairment.





The driver taking the test has to be instructed to look straight ahead, and keep the head still while following and focusing on the stimulus until told to stop by the officer. The stimulus has to be about 12 to 15 inches in front of the driver's eyes for ease of focus and must be held at eye level, so that the eyes are wide open and looking directly at the stimulus. Police officers are trained to receive an acknowledgement from the driver that the stimulus is at a comfortable distance and to document this confirmation. Eyeglasses should be removed in order for the police officer to be able to make a more accurate determination of the driver's performance. If the person cannot see the stimulus without wearing eyeglasses, the test must be allowed wearing the glasses. Also, hard contact lenses should be removed to avoid any dislodging when the eyes are out at maximum deviation and to prevent damage to the eyes.

When administering the HGN test, the police look for three clues to determine if alcohol intoxication has taken place. The first clue that the police are looking for is the involuntary jerking of the eyes, also called the lack of smooth pursuit. Police officers are trained to look for the person's inability to pursue a stimulus smoothly while simultaneously focusing horizontally. If the driver moves their head at any time, the score may be invalid, regardless of which clue the officer is looking for. An example of smooth pursuit would be a marble rolling across a flat surface. If a driver is under the influence, the eyes will jerk as if the marble was rolled across a bumpy, uneven surface. The police officer is trained to check the left eye first by moving the stimulus to the officer's right. The stimulus has to be moved smoothly in order to be able to bring the driver's eye as far to the side as it can go. Any shaking hand movements by the officer could potentially induce nystagmus in the driver's eyes and possibly invalidate the test. Police are instructed to make two or more passes in front of the eye to be absolutely certain about the presence of nystagmus. If this clue is scored as nystagmus, the driver is assessed one point. However, just because the driver has this clue in one eye doesn't mean it will occur in the other eye.



The second clue the police are looking for is distinct jerkiness at maximum deviation. After the police officer has checked the first eye for smooth pursuit, the same eye has to be checked for distinct jerkiness at maximum deviation. The way the police perform this test is by moving the stimulus to the side until the eye has gone as far to the side as possible. When the eye is at this point, no sclera (white of the eye) will be visible in the corner of the eyeball. The eyeball must remain at that position for two or three seconds and for the police officer to attempt to discern eyeball jerkiness. If the police officer can't make this distinction from a slight nystagmus, the benefit of the doubt goes to the driver. A common mistake that police officers make is not bringing the eyes out to the side as far as they can go or too rapidly returning the stimulus. This can incorrectly score this part of the test. During this part of the test, a certain degree of discomfort is experienced, which causes a slight twitching of the eyes when they are at maximum deviation. If the police officer returns the stimulus too quickly, it can cause a natural nystagmus which can be mistaken for one caused by alcohol intoxication.

The third and final clue is what is referred to as the angle of onset. This clue is the most difficult to evaluate, but the angle of onset is perhaps the best indicator of the presence of the other clues. This correlation doesn't work conversely, however, the presence of either of the first two clues doesn't guarantee the third clue will be present. The driver will be told to follow the stimulus until they are looking down a 45-degree diagonal angle. To estimate this 45-degree angle, the police officer is told to place the stimulus between the driver's ear and nose on the side being tested. This estimation of the angle is critical because scientific studies have shown that as the intoxication of a person increases, the angle will decrease.

There are three categories of nystagmus. “Rotational nystagmus” occurs when a person is spun around or rotated quickly, which causes the fluid in the inner ear to become disturbed. If the eyes of a person rotating were to be observed, they would be seen to jerk noticeably. “Post-rotational nystagmus” occurs when a person stops spinning because the fluid in the inner ear remains disturbed for a period of time, and the eyes continue to jerk. “Caloric nystagmus” occurs when fluid motion in the canals of the vestibular system is stimulated by temperature; for example, putting warm water in one ear and cold in the other.

There are a few conditions that can affect a gaze nystagmus test. A person who has a glass eye or vision in only one eye cannot be given this test for evaluation of just one eye with a doubled score. This assumes that the other eye would render the same results. If the person taking the test has what is known as a lazy eye, the officer is trained to test one eye while the person’s other hand covers the other eye. A person with color blindness cannot take this test because nystagmus is common for the condition. A natural nystagmus may also present due to some form of neurological disorder, brain damage, epilepsy or pathological disorder. The narrowness of certain individuals’ eyes can also make determination of nystagmus more difficult. A large disparity between the right and left eye is another indicator of a possible problem. If there is an accident, and the driver sustains a concussion, this can bring on pathological nystagmus which invalidates the test.





Police officers are trained to administer the HGN test with the driver facing a quiet, still background, turned away from police cruisers and any oncoming traffic. The reason for this is to avoid the possibility of inducing a condition known as optokinetic nystagmus. This develops when a person focuses on several objects at one time or on any objects that are moving away from the driver. Optokinetic nystagmus is a defense mechanism of the human body to prevent the eyes from tiring. There are numerous visual or other distractions that can also impede the results of the HGN test. Certain environmental factors such as wind, dust, rain, etc. can interfere with the performance of the nystagmus test. The law enforcement community considers the HGN test to be about 77 percent accurate when performed alone.

Some of the questions that need to be answered in relation to the HGN test are:

- Did the officer ask you to perform a test in which you were requested to follow a finger, pen, or some other object?
- What type of object did the officer use?
- What type of explanation, if any, was given to you about the test?
- What type of motion did the officer use to move the object?
- Did anything distract you while taking this test?
- How long did the test take?
- Did the officer comment on your performance?
- Do you have any medical issues with your eyes that could have impacted your performance on this test (i.e. astigmatism)?

WALK-AND-TURN (WNT)

The next field sobriety test is the walk-and-turn. This test, along with the next field sobriety test (the one-leg stand), is based upon the concept of divided attention. These tests divide the driver's attention between a physical task and a mental task. The physical tasks include balance and coordination while the mental tasks include comprehension of verbal instructions, recall of memory, and processing information. Divided attention tests are built around the idea that a person under the influence may be able to perform one task but not the other if under the influence of alcohol. These tests are designed to divide the driver's attention between two things at once to check for impairment because operating a motor vehicle requires divided attention.

The walk-and-turn test divides the driver's attention between balancing, counting out loud, recalling the number of steps, and turning - all according to the police officer's instructions. The correct administration of this test requires that it be performed on a hard, dry, level, non-slip surface with sufficient room for the driver to be able to complete nine heel-to-toe steps. Some of the issues with the validity of this test are when it is conducted in the winter with wind and weather conditions preventing proper standards of administration. DUI detection training calls for a straight line, which must be clearly visible. However, police officers are also taught that the test can be performed parallel to the curb provided the driver is in no physical danger. An officer may prevent the driver from taking the test or stop the test for safety reasons.





It needs to be stated that some people clearly shouldn't be given this test because even the average sober person would have difficulty performing it. Persons over the age of 65 or more than 50 pounds overweight will have increased difficulty. A person who has any physical impairment that would affect the ability to balance also should not be given this test. Police officers are trained to take medical issues into account when developing probable cause to make an arrest. Anyone, male or female, wearing heels more than two inches high should be given the opportunity to remove their shoes. The reason for this is obvious as an extended heel can affect a person's ability to balance and obstruct any validity to the test results. People who have vision issues such as not being able to see out of one eye may also have problems with this test because of poor depth perception.

The walk-and-turn test is comprised of two parts: the instructions stage and the walking stage. The instruction stage is designed to divide the driver's attention between balancing and listening to the police officer. The driver must stand with feet in the heel-to-toe position, keeping arms at the sides, all while listening to the police officer's instructions. The police officer needs to follow training and procedure perfectly during this stage, or it may affect the validity of the entire test. While the driver is taking this test, the police officer must observe the driver from approximately three to four feet away and remain motionless. If the police officer is too close or creates a distraction with excessive motion, this could cause the driver to make errors not made otherwise and decrease the validity of the test. The police officer has to give explicitly clear verbal instructions, supplemented with an actual demonstration of the test. Without the demonstration of the test, instructions alone can discredit the validity of the test results. The police officer has to receive affirmative confirmation of the driver's comprehension and understanding of the instructions. If the officer doesn't confirm the driver's understanding of the instructions each time an instruction is given, the results of the test may be invalid.



During the walking stage of the test, the police officer is trained to make sure that the right foot is in front of the left foot at the start of the test in order to maintain uniformity of procedure. This is also important later in the test when the driver has to turn and be evaluated on the turn. If a driver is instructed improperly, or shown an improper demonstration of the test, it could affect the test results. After getting into the starting position, the police officer has to inform the driver to remain in that position until told to begin walking. The officer has to demonstrate two or three heel-to-toe steps for the driver, as well as the difficult task of how to turn. The driver's foot has to be kept on the line and turning must be done by taking a series of small steps. The police officer will continue to instruct the driver to do the following:

- Keep your arms at your side while walking.
- Watch your feet at all times.
- Count your steps out loud.
- Don't stop once you have begun.

The walk-and-turn test relies on certain predictable mistakes that a person under the influence will display. It is a standardized field sobriety test, which means it follows the same procedure every time. There are also other scoring factors taken into consideration for failing or passing the test other than a subjective opinion. There are several ways that an officer can assess a point against a driver's performance. Officers are looking for eight specific clues:

Keeps balance during instructional phase: A point is scored against performance if the driver loses balance throughout the instructions only if the driver also doesn't maintain the heel-to-toe position. A point is not scored if the driver sways or uses arms to balance but maintains the starting position during this stage of the test.



Starts too soon: A point is scored when a driver starts to walk before the officer instructs them to do so. This can only be scored if the officer specifically instructed the driver not to start until told to do so and the driver stated that they understood the instruction. (I personally find this ironic, largely because the officer is starting to judge you immediately upon taking the first position. You can “start” the test too soon even though you are already being scored on the test!).

Stops while walking: A point can be scored if the driver stops to regain balance once the test starts. The police officer can’t score this part of the test if the driver is simply walking too slowly, but can score this if the driver pauses for a few seconds after one step.

Doesn’t touch heel to toe: If the driver leaves even a small space between the heel and the toe while walking, this point could be assessed.

Steps off line: The driver has to stay straight on the line or a point can be assessed, although this can happen more than once and only one point at maximum can be assessed.

Uses arms for balance: Police officers are trained to be conservative in their scoring and not to score a point if the driver sways or uses arms to balance.

Loses balance on turns or turns incorrectly: A driver can also be given a point if balance is lost during the turning part of the test. This point can be scored only if the driver takes both feet off the line while turning or doesn’t take small steps. Also the driver cannot pivot in one movement, similar to the about-face used in military training. In order for the scoring of the test to be proper, it is important that the police officer demonstrates and articulates the basis of movement to the driver.

Takes the wrong number of steps: This factor is only scored once, even if the wrong number of steps is taken in either direction.



During the whole process of the walk and turn, the driver has been instructed by the police to look down at their feet while counting the steps out loud. However, if a driver doesn't adhere to these instructions, a point cannot be scored because these are not scoring factors for the test.

If a driver receives at least two total points on the test, police officers are trained to use this as probable cause to believe that the driver is under the influence of alcohol and to make an arrest.

Police officers consider a driver unable to complete the walk-and-turn test when a driver does one of three things:

- Steps off line three or more times.
- Could potentially fall down.
- Simply cannot do the test.

Some questions relating to the walk-and-turn are:

- Did the officer specifically direct you to walk in a straight line for a certain number of steps?
- What directions did the officer give you before the test began?
- Did the officer demonstrate the test for you so you understood what was expected?
- How many steps did the officer take to demonstrate?
- What were you doing when the officer was explaining the test?
- Was there a line or some other identifiable marker for you to walk on while taking the test? If yes, what type of line was it, and how big was it?
- How long did the test take?
- How did you do on the test?
- Did the officer comment on your performance on this test?

Scientific studies consider the walk-and-turn test to be 68 percent accurate when administered alone. When combined with the HGN test, the pair is considered to be about 80 percent accurate in detecting impaired drivers.

ONE-LEG STAND (OLS)

The final part of the field sobriety tests is the one-leg stand. It is a divided attention test that is based on two phases: the instructions phase and the balancing and counting phase. In order to accurately administer the one-leg stand, the police officer has to move the driver to a surface that is hard, dry, level, and non-slippery so that the driver would not be in any danger if they were to fall. Certain wind or weather conditions can interfere with the validity of this test. This test shouldn't be given to people who are more than 65 years old, more than 50 pounds overweight, or who have physical impairments that interfere with balance.

Anyone wearing high heels more than two inches high should be given the opportunity to remove their shoes as the heels may lower the reliability of the results. Police officers are not trained to give this test without adequate lighting. In darkness, even a sober person may have difficulty with the test. This is because there is a lack of a visual frame of reference that would otherwise be provided with proper lighting. Similar to the walk-and-turn test, it is important that the police officer observes the driver from at least three feet away. The police officer should also remain as motionless as possible so that there are absolutely no distractions caused.

In the administration of this test, there are two separate stages involved. The first phase is called the instructions phase. During the instructions phase, the driver has to stand with feet together, with arms at the sides, while listening to instructions. This is designed to divide the driver's attention between balancing and listening to the police officer's instructions. The test is begun by giving verbal instructions, followed by a demonstration. The police officer is trained to advise the driver to stand heels together and arms down at the sides, making sure not to begin the test until they are told to do so. The officer has to receive confirmation that the driver understood the instructions, and then document this acknowledgement. There aren't any scoring opportunities until the next stage of the test, which is the balance and counting stage. The only other possibility is if the driver can't perform the test, which would be scored as a maximum of four points and would be explained by the officer in the police report.

The next phase of the one-leg stand is the balancing and counting phase. At the beginning of this stage, the officer has to explain the test requirements further by instructing the driver to stand on one leg, and the driver is allowed to choose which leg to stand on. The driver has to hold the other foot in front about six inches from the ground, all the while keeping the foot parallel to the ground. While standing, the driver has to keep arms at the sides, and eyes on the elevated foot, while counting out loud “one thousand one, one thousand two,” etc. all the way until a full 30 seconds has passed. This basically divides the driver’s attention between balancing and counting. The timing is important to note as impaired persons usually cannot stand for the full 30 seconds. Police officers are looking for four specific clues from drivers while they are performing the one-leg stand:

- Swaying while balancing.
- Using arms for balance.
- Hopping.
- Putting the foot down.
- Police consider a driver unable to complete the one-leg stand when a driver either:
 - Puts his/her foot down three or more times during the 30-second testing period, or
 - Simply cannot do the test.





In regards to scoring the one-leg stand, a driver may be scored a point for swaying while balancing. Police officers are trained not to be too critical in regards to this scoring as the driver taking the test is not a gymnast and some swaying is a natural human reaction. The swaying that can be scored is a marked sway, which would be a back and forth motion while the driver maintains the position.

Another aspect of the scoring would be the driver using their arms for balance, raising them six or more inches from the side of the body. The police officer has to take into account the natural position of the arms. For example, some bodybuilders or men with large arms may have a natural position of more than six inches.

A third scoring factor on the test is whether or not a driver hops on one foot during the test. This is scored only if the driver resorts to hopping on the anchor foot in order to maintain balance. This point should not be scored if the driver is having difficulty by moving the anchor foot back and forth. As part of training, police officers are supposed to be able to distinguish this and to allow the driver this movement.

Finally, if the driver places their foot down, even if more than once, only one point can be given. The driver should be allowed to continue from the point of difficulty as the one-leg stand could lose sensitivity if it is repeated several times. The driver has to be instructed to keep watching the raised foot and to count out loud, but no points are issued if this instruction is not followed. If the driver counts too slowly, it is important that the officer stops the test after 30 seconds have elapsed as this could affect the scoring and validity of the test. Police officers are trained to time 30 seconds of total test time so if the driver counts too fast, the officer will instruct them to slow down.



A person can receive a maximum score on this test in two ways. The first way is if the driver puts the foot down three or more times during the 30-second count. The second way is if the driver can't perform the test because of their intoxication level. If this happens, the maximum score is given; however, police officers have to be able to articulate why they felt that the defendant was incapable. The one-leg stand administered alone is considered approximately 65 percent effective if instructed and scored properly.

For the purposes of the police report and any courtroom testimony, the officer is trained that it is simply not enough to write the driver's score on the three tests. The numeric scores are only important to the police officer at the scene in order to establish probable cause. A score is insufficient to secure a criminal conviction in a court of law and has to be accompanied by more descriptive evidence. The police officer has to be able to describe in detail how the driver performed. Remember, once again, that you do not have to take the field sobriety tests and you can politely decline when the officer requests that you participate in the tests.

Some of the questions concerning the one-leg stand are:

- Did the officer ask you to stand on one leg?
- If the answer is yes, what directions did the officer give to you about this test before you began?
- Did the police officer specifically demonstrate this test for you?
- How long did the test take, specifically did you have to count to 30 or another number?
- How was your performance on this test?
- Did the officer comment on your performance on this test?

NON-STANDARDIZED FIELD SOBRIETY TESTS

There are several “tests” that are not standardized. Here, the police can really use any type of test they so desire.

However, the main non-standardized tests are:

1) The Rhomberg-Modified test. This is a test where the police will instruct the driver to close their eyes, tilt their head back, stand with their feet together and arms at their side, and *estimate* the passing of 30-seconds..

2) The Finger-to-Nose test. In this test, the police will instruct the driver to stand with their feet together, hands at their side, palms facing out, and use the *pad* of your index finger on either hand, and then instruct which hand the person should use. There is no pattern to this test; the police officer calls out which ever hand, left or right, in whatever order they choose and the police are allowed to call the same hand as many times as they want.

There are some tests that have been romanticized by Hollywood, or rumors have spread about such as saying the alphabet forwards or backwards, or even starting in the middle of the alphabet and then going forwards or backwards. Another test is counting, out loud, down from a certain number until the police officer tells you to stop. Another test involves an instruction where you take your thumb and tap your fingers, in order from index to pinky and then pinky to index finger, on the tip of your thumb with the pad of your finger and counting out loud “1, 2, 3, 4; 4, 3, 2, 1” as you tap each finger to the thumb.

BLANKET ADVICE

If stopped by police, please follow these simple tips:

DO:

- Be Polite
- Provide your truthful name, license, registration & insurance
- **Ask to call your attorney:**
(480) 256-2449

DON'T:

- **Do not** volunteer any information
- **Do not** answer any questions (other than name/license and docs.)
- **Do not** agree to a BLOOD, BREATH or URINE TEST (*until you have talked to your attorney*).

Tell the officer:

"I do not consent to any search of my person or property. I want to speak with my attorney. I will not answer any questions at this time. If appropriate, I would like to be released so I can get an independent chemical test."

If you find yourself in this position, here is what I have printed on all my business cards. Please, if you take nothing else from this writing, take and use this.

CONTACT US

Dworman Law has been practicing Criminal and DUI defense throughout Arizona for nearly a decade. We are familiar with all of the field sobriety tests and how to defend against their results. Let us review your situation and advise you on how best to proceed. We fight for the most favorable outcome in your case, including a non-guilty verdict after trial. Call us at 480-256-2449 for more information.



ABOUT OUR FIRM

Howard is an appropriately aggressive trial attorney, with a previous career in law enforcement. Howard diligently and tirelessly works to empower justice and defend his client's rights. Howard's reputation and hard work earned him not-guilty verdicts for the majority of his jury trials. Howard's experience includes countless bench trials, evidentiary hearings, probable cause hearings, and in-custody Initial Appearances.

Contact us anytime!



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