

Instructor Guide

DWI Detection and Standardized Field Sobriety Testing (SFST)

Session 4 - Overview of Detection, Note Taking, and Testimony

50 Minutes

Session 4

Overview of
Detection,
Note Taking,
and Testimony



DWI Detection and Standardized Field Sobriety Testing

Learning Objectives

- Three phases of detection
- Tasks and key decision of each phase
- Uses of a standard note taking guide
- Guidelines for effective testimony
 - Conduct a thorough pre-trial review of all evidence and prepare for testimony
 - Provide clear, accurate and descriptive direct testimony concerning DWI Investigations



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

- Describe the three phases of detection.
- Describe the tasks and key decision of each phase.
- Discuss the uses of a standard note taking guide.
- Discuss guidelines for effective testimony.

Detection is both the most important and difficult task in the DWI enforcement effort. If officers fail to detect DWI offenders, the DWI countermeasures program will ultimately fail. If officers do not detect and arrest DWI offenders, then prosecutors cannot prosecute them, the courts and driver licensing officials cannot impose sanctions on them, and treatment and rehabilitation programs will go unused.

<u>CONTENT SEGMENTS</u>	<u>LEARNING ACTIVITIES</u>
A. Three Phases of Detection.....	Instructor-Led Presentation
B. DWI Investigation Field Notes	Reading Assignments
C. Courtroom Testimony	

DWI Detection

The entire process of identifying and gathering evidence to determine if a subject should be arrested for a DWI violation.

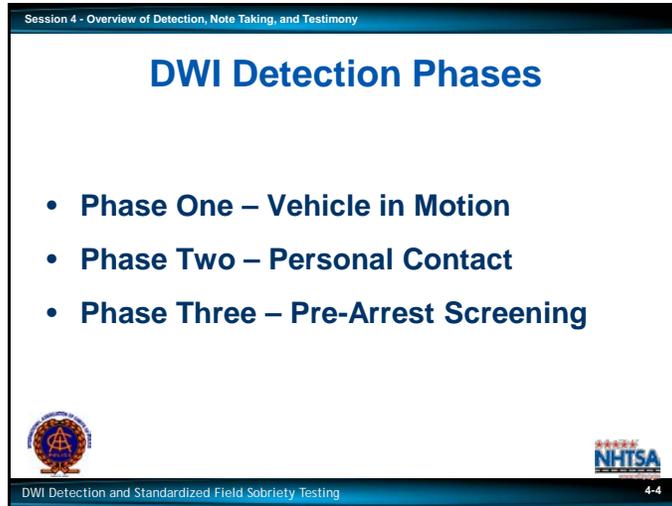


The term DWI detection has been used in many different ways. Consequently it does not mean the same thing to all law enforcement officers. For the purposes of this training, DWI detection is defined as: The entire process of identifying and gathering evidence to determine if a subject should be arrested for a DWI violation.

Detection begins when the officer develops the first suspicion of a DWI violation.

Detection ends when the officer decides whether or not there is sufficient probable cause to arrest the driver for DWI. Your attention may be called to a particular vehicle or individual for a variety of reasons. The precipitating event may be a loud noise, an obvious equipment or moving violation, behavior that is unusual, but not necessarily illegal, or almost anything else. Initial detection may carry with it an immediate suspicion that the driver is impaired; or a slight suspicion; or even no suspicion at all. In any case, it sets in motion a process wherein you focus on a particular vehicle or individual and have the opportunity to observe that vehicle or individual and to gather additional evidence.

The detection process ends when you decide either to arrest or not to arrest the individual for DWI. That decision is based on all of the evidence that has come to light since your attention was first drawn to the vehicle or individual. Effective DWI enforcers do not leap to the arrest/no arrest decision. Rather, they proceed carefully through a series of intermediate steps, each of which helps to identify the collective evidence.



A. Three Phases of Detection

The typical DWI contact involves three separate and distinct phases:

- Phase One: Vehicle in motion
- Phase Two: Personal contact
- Phase Three: Pre-arrest screening

In Phase One, you usually observe the driver operating the vehicle.

In Phase Two, after you have stopped the vehicle, there usually is an opportunity to observe and speak with the driver face to face.

In Phase Three, you usually have an opportunity to administer Standardized Field Sobriety Tests to the driver to determine impairment.

In addition to SFSTs, some jurisdictions may allow you to administer other field sobriety tests, and/or a preliminary breath test (PBT) to verify that alcohol is the cause of the impairment. PBTs can be used to assist in making an arrest decision and should rarely be the only factor in deciding to arrest. PBTs should be used after administering SFSTs.

The DWI detection process does not always include all three phases. Sometimes there are DWI detection contacts in which Phase One is absent. These are cases in which you have no opportunity to observe the vehicle in motion. This may occur at the crash scene, at a roadblock or checkpoint, or when you have responded to a request for motorist assistance. Sometimes there are DWI contacts in which Phase Three is absent. There are cases in which you would not administer formal tests to the driver. This may occur when the driver is grossly impaired, badly injured, or refuses to submit to tests.

Decisions

- **Phase One: Vehicle in Motion - Should I stop the vehicle?**
- **Phase Two - Personal Contact - Should the driver exit?**
- **Phase Three - Pre-arrest Screening - Is there probable cause to arrest the suspect for DWI?**



In Phase One: Your first task is to observe the vehicle in operation. Based on this observation, you must decide whether there is sufficient cause to command the driver to stop. Your second task is to observe the stopping sequence. You may want to take a picture of the vehicle or scene, especially if the vehicle was involved in a crash.

In Phase Two: Your first task is to observe and interview the driver face to face. Based on this observation, you must decide whether there is sufficient cause to instruct the driver to step from the vehicle for further investigation. Your second task is to observe the driver's exit and walk from the vehicle. You may want to take a photo of the defendant.

In Phase Three: Your first task is to administer structured, formal psychophysical tests. Based on these tests, you must decide whether there is sufficient probable cause to arrest the driver for DWI. Your second task is then to arrange for (or administer) a Preliminary Breath Test.

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Possible Outcomes

Yes - Do It Now

- Phase One: Yes, there are reasonable grounds to stop the vehicle
- Phase Two: Yes, there is enough reason to suspect impairment to justify getting the driver out of the vehicle for further investigation
- Phase Three: Yes, there is probable cause to arrest driver for DWI right now




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Possible Outcomes

Wait - Look for Additional Evidence

- Phase One: Don't stop the vehicle yet; keep following and observing it longer
- Phase Two: Don't get the driver out of the car yet; keep talking to and observing the driver longer
- Phase Three: Don't arrest the driver yet; administer another field sobriety test before deciding




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Each of the major decisions can have any one of three different outcomes:

- Yes - Do it Now
- Wait - Look for Additional Evidence
- No - Don't Do It

Consider the following examples.

Yes - Do It Now

Phase One: Yes, there are reasonable grounds to stop the vehicle.

Phase Two: Yes, there is enough reason to suspect impairment to justify getting the driver out of the vehicle for further investigation.

Phase Three: Yes, there is probable cause to arrest the driver for DWI right now.

Wait - Look for Additional Evidence

Phase One: Don't stop the vehicle yet; keep following and observing it a bit longer.

Phase Two: Don't get the driver out of the car yet; keep talking to and observing the driver a bit longer. (This option may be limited if the officer's personal safety is at risk.)

Phase Three: Don't arrest the driver yet; administer another field sobriety test before deciding.

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DWI Detection – Phase One

- What is the vehicle doing?
- Do I have grounds to stop the vehicle?
- How does the driver respond to my signal to stop?
- How does the driver handle the vehicle during the stopping sequence?




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DWI Detection – Phase Two

- Vehicle approach: What do I see?
- Talking with driver: What do I hear, see and smell?
- How does the driver respond to questions?
- Should I instruct the driver to exit vehicle?
- How does the driver exit?
- When the driver walks toward the side of the road, what do I see?




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DWI Detection – Phase One

Answers to questions like these can aid you in DWI detection.

Phase One:

- What is the vehicle doing?
- Do I have grounds to stop the vehicle?
- How does the driver respond to my signal to stop?
- How does the driver handle the vehicle during the stopping sequence?

Phase Two:

- When I approach the vehicle, what do I see?
- When I talk with the driver, what do I hear, see and smell?
- How does the driver respond to my questions?
- Should I instruct the driver to exit the vehicle?
- How does the driver exit?
- When the driver walks toward the side of the road, what do I see?

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DWI Detection – Phase Three

- Should I administer field sobriety tests to the driver?
- How does the driver perform those tests?
- What exactly did the driver do wrong when performing the tests?
- Do I have probable cause to arrest for DWI?
- Should I administer a preliminary breath test?
- What are the results of the preliminary breath test?



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Successful DWI Detection

- Know what to observe
- Ask the right kinds of questions
- Use the right kinds of tests
- Interpret, document, and articulate all observations thoroughly
- Be motivated and apply your knowledge and skills



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Phase Three:

- Should I administer field sobriety tests to the driver?
- How does the driver perform those tests?
- What exactly did the driver do wrong when performing the tests?
- Do I have probable cause to arrest for DWI?
- Should I administer a preliminary breath test?
- What are the results of the preliminary breath test?

The most successful DWI detectors are those officers who:

- Know what to observe
- Ask the right kinds of questions
- Use the right kinds of tests
- Interpret, document, and articulate all observations thoroughly
- Be motivated and apply your knowledge and skills

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Note Taking and Testimony

- Graphically describe your observations
- Convey evidence clearly and convincingly
- Field notes are only as good as the information they contain




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Use Clear Convincing Language

What is Vague Versus Clear?




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Note Taking and Testimony

A basic skill needed for DWI enforcement is the ability to graphically describe your observations. Just as detection is the process of collecting evidence, description largely is the process of conveying or articulating evidence.

Successful description demands the ability to convey evidence clearly and convincingly. Your challenge is to communicate evidence to people who weren't there to see, hear and smell the evidence themselves. Your tools are the words that make up your written report and verbal testimony. You must communicate with the supervisor, the prosecutor, the judge, the jury and even with the defense attorney. You are trying to "paint a word picture" for those people, to develop a sharp mental image that allows them to "see" what you saw; "hear" what you heard; and "smell" what you smelled.

Officers with the knowledge, skills and motivation to select the most appropriate words for both written reports and courtroom testimony will communicate clearly and convincingly, making them more successful in DWI prosecution.

Use Clear and Convincing Language

Field notes are only as good as the information they contain. Reports must be clearly written and events accurately described if the reports are to have evidentiary value. One persistent problem with DWI incident reports is the use of vague language to describe conditions, events and statements. When vague language is used, reports provide an inaccurate picture of what happened. Clear and complete field notes help in preparation for your testimony.

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Vague	Clear
<ul style="list-style-type: none"> Made an illegal left turn on Jefferson Drove erratically Driver appeared drunk, shaking 	<ul style="list-style-type: none"> From Main, turned left (north bound) on Jefferson, which is one way south bound Weaving from side to side. Crossed center line twice and drove on shoulder three times Driver's eyes bloodshot; gaze fixed; Strong odor of alcoholic beverage on driver's breath

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Vague	Clear
<ul style="list-style-type: none"> Vehicle stopped in unusual fashion Vehicle crossed the center line 	<ul style="list-style-type: none"> Vehicle struck, climbed curb; stopped on sidewalk Vehicle drifted completely into the opposing traffic lane

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Consider the following examples. Vague Language and Clear Language

- Made an illegal left turn on Jefferson
- From Main, turned left (north bound) on Jefferson, which is one way south bound
- Drove erratically
- Weaving from side to side. Crossed center line twice and drove on shoulder three times
- Driver appeared drunk, shaking
- Driver's eyes bloodshot; gaze fixed; Strong odor of alcoholic beverage on driver's breath
- Vehicle stopped in unusual fashion
- Vehicle struck, climbed curb; stopped on sidewalk
- Vehicle crossed the center line
- Vehicle drifted completely into the opposing traffic lane

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Chronology of Testimony

- **Phase One: Vehicle in Motion**
 - ✓ Initial observations of vehicle
 - ✓ Observations during stopping sequence
- **Phase Two: Personal Contact**
 - ✓ Face to face observations
 - ✓ Statements
- **Phase Three Pre-arrest screening**
 - ✓ SFST's
 - ✓ PBT



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Chronology of Testimony

In court, your testimony should be organized chronologically and should cover each phase of the DWI incident:

Phase One: Vehicle in Motion – initial observation of vehicle, the driver or both including what first attracted your attention to the vehicle/driver and details about the driving before you initiated the traffic stop

Reinforcing cues, maneuvers or actions, observed after signaling the driver to stop, but before driver's vehicle came to a complete stop.

A “cue” is defined as a reminder or prompting as a signal to do something.

Phase Two: Personal Contact – face to face observations including personal appearance, statements and other evidence obtained during your initial contact with driver.

A “clue” is defined as something that leads to the solution of a problem.

Phase Three: Pre-arrest Screening – sobriety tests administered to the driver and the results of any preliminary breath tests.

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Test Your Knowledge

DWI detection is defined as _____
 The three phases in a typical DWI contact are:

- Phase One _____
- Phase Two _____
- Phase Three _____

In Phase One, the officer usually has an opportunity to _____




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Test Your Knowledge

Phase Three may not occur if _____
 In Phase Two, the officer must decide _____

Each major decision can have any one of _____ different outcomes.
 These are _____.




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TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. DWI detection is defined as _____

2. The three phases in a typical DWI contact are:

Phase One _____
 Phase Two _____
 Phase Three _____

3. In Phase One, the officer usually has an opportunity to _____

4. Phase Three may not occur if _____

5. In Phase Two, the officer must decide _____

6. Each major decision can have any one of 3 different outcomes. These are: _____

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Test Your Knowledge

At each phase of detection, the officer must determine _____

Evidence of DWI is largely _____ in nature

Law enforcement officers need a system and tools for recording field notes at scenes of DWI investigations because DWI evidence is _____.




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Test Your Knowledge

Testimony preparations begins _____

List two things the officer should do to prepare testimony just before the trial.

A. _____

B. _____




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7. At each phase of detection, the officer must determine _____

8. Evidence of DWI is largely _____ in nature.

9. Law enforcement officers need a system and tools for recording field notes at scenes of DWI investigations because DWI evidence is _____.

10. Testimony preparations begins _____

11. List two of the following the officer should do to prepare testimony just before the trial.
