

Fifty Minutes

SESSION IV  
OVERVIEW OF DETECTION,  
NOTE TAKING AND TESTIMONY

## SESSION IV

### OVERVIEW OF DETECTION, NOTE TAKING AND TESTIMONY

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

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

#### CONTENT SEGMENTS

- A. Three Phases of Detection
- B. DWI Investigation Field Notes
- C. Courtroom Testimony

#### LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Reading Assignments



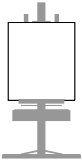
Display IV-O (Session Objectives)



**50 Minutes**



**15 Minutes**



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IV-1**



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IV-2**

**IV OVERVIEW OF  
DETECTION, NOTE TAKING  
AND TESTIMONY**

**A. Three Phases of Detection**

1. This segment focuses on the job of DWI detection.
  - a. DWI detection defined as - "The entire process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DWI violation."
  - b. Detection begins when the officer develops the first suspicion that a DWI violation possibly is occurring.
  - c. Detection ends when the officer finally decides whether there is or is not sufficient probable cause to arrest the suspect for DWI.
2. DWI detection contacts involve three phases.
  - a. In Phase One, the officer observes the suspect operating the vehicle.
  - b. In Phase Two, after the officer has stopped the vehicle, there usually is an opportunity to observe and speak with the suspect, face-to-face.

Write on dry-erase board or flip chart - "Focus: DWI Detection"

Point out that other definitions sometimes are given for "DWI Detection", but that this particular definition will be used for this course.

Point out that the initial suspicion may be very slight in some cases, and may be very strong in others.

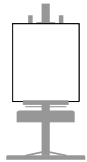
Point to Phase One on slide.

Point to Phase Two on slide.

**Aids**

**Lesson Plan**

**Instructor Notes**



**Display**  
IV-3

- c. In Phase Three, the officer usually has an opportunity to administer some formal, structured tests to the suspect, to evaluate the suspect's degree of impairment.
- 3. Each detection phase involves a major decision.
  - a. Phase One: Decision -- is there sufficient cause to command the suspect to stop?
  - b. Phase Two: Decision -- is there sufficient cause to instruct the suspect to step from the vehicle for further investigation?
  - c. Phase Three: Decision -- is there sufficient probable cause to arrest the suspect for DWI?
- 4. At any particular moment, any of these three major decisions could have three different outcomes.
  - a. Possible Decision #1: "Yes... Do it Now".

Point to Phase Three on slide. Point out that these formal structured tests may include chemical (breath) tests as well as the more traditional field sobriety tests.

Write the major decisions (Stop? Exit? Arrest?) on dry-erase board or flipchart.

Point out that merely stopping the suspect doesn't necessarily mean that the officer is committed to arresting the suspect for DWI.

Point out that, by instructing the suspect to exit the vehicle, the officer still is not committed to making the DWI arrest. However, the officer clearly suspects that there is a strong possibility that the driver is under the influence.

Emphasize that this decision is based on the accumulation of evidence from all three phases, and represents the culmination of the detection process.

Examples:

- o Phase One (Vehicle)- yes, there are reasonable grounds to stop that vehicle.

**Aids**

**Lesson Plan**

**Instructor Notes**

b. Possible Decision #2:  
"Wait...look for additional evidence."

c. Possible Decision #3:  
"No...Don't Do It."

o Phase Two (Person) - yes, there is enough reason to suspect alcohol/drug impairment to justify getting the driver out of the vehicle for further investigation.

o Phase Three (Tests) - yes, there is probable cause to believe the driver is DWI.

Examples:

o Phase One - don't stop the driver yet; keep following the vehicle to watch the operator's driving a bit longer.

o Phase Two - don't get the driver out of the car yet; keep talking and watching them a bit longer.

o Phase Three - don't arrest the driver yet; administer another field sobriety test before deciding.

Examples:

o Phase One - No, there are no grounds for stopping that driver.

o Phase Two - No, there isn't enough evidence of DWI to justify administering field sobriety tests.

o Phase Three - No, there is not sufficient probable cause to believe this driver has committed DWI.

## 5. Summary of Detection Phases.

- a. Sometimes, there are DWI detection contacts in which Phase One is absent: that is, where there is no evidence of DWI violation based on the officer's observation of the vehicle in motion.
- b. Sometimes, there are contacts in which Phase Three never occurs: that is, where no formal tests are administered to the suspect.
- c. At each phase of detection, the officer must determine whether there is sufficient evidence to provide the "reasonable suspicion" necessary to proceed to the next step in the detection process.
  - (1) It is always the officer's duty to carry out whatever phases are appropriate, to make sure that all relevant evidence of DWI is brought to light.
  - (2) The ultimate decision to arrest or not arrest for DWI is based on the accumulation of all relevant evidence, from all phases.



Ask representative participants to suggest situations in which Phase One might be absent. (examples: crash scene; roadblock; motorist assistance contact)



Ask for examples (e.g., suspect is grossly intoxicated; suspect is seriously injured; suspect refuses to submit to formal tests)

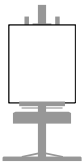
Solicit participants' questions concerning the overview of detection phases.



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IV-4



20 Minutes



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IV-5

**B. DWI Investigation Field Notes**

1. Throughout this course, participants will have opportunities to practice observing, recording and describing evidence associated with the detection phases.
2. The evidence gathered during the detection process is vital to establish the elements of the violation, and to support prosecution of the offense.
3. This evidence is observational in nature, and therefore is extremely short-lived.
4. Officers must be able to recognize and act on their own observations. But officers also must be able to recall those observations, and describe them clearly and convincingly, to secure a conviction.
  - a. Officer is inundated with much evidence of DWI: sights, sounds, smells, etc.
  - b. Officer recognizes this evidence, sometimes subconsciously, and bases arrest decision on it.
  - c. But later, officer must be able to recollect this observational evidence.
  - d. And must be able to express the evidence clearly in any written report or oral

Point out how the practice opportunities will be provided (e.g., film segments, classroom demonstrations, etc.).

Write on dry-erase board or flipchart: "observations -- short-lived evidence".

Display slide IV-5, emphasizing two key detection performance requirements.

**Aids**

**Lesson Plan**

**Instructor Notes**



**Display**  
IV-6A  
through  
IV-6D



**15 Minutes**

testimony.

5. Officers need a system for documenting their observations in notes at the scenes of DWI investigations.

a. Standard Note-Taking Guide.

(1) Section I: Suspect/  
Vehicle/Location.

(2) Section II: Detection  
Phase One.

(3) Section III: Detection  
Phase Two.

(4) Section IV: Detection  
Phase Three.

**C. Courtroom Testimony**

1. Although the majority of DWI cases do not actually come to trial, the arresting officer must be fully prepared to testify in

NOTE: This does not preclude an agency from developing their own note-taking guide.

Refer to Attachment A, "DWI Investigative Field Notes" (Copy and distribute to participants.)

Note: Advise participants that each section of the note-taking guide will be broken down and thoroughly explain in subsequent sessions.

Briefly indicate the types of notes that should be taken in each section of the standard note-taking guide.

Point out that the specific contents of the guide will be clarified as the training progresses through the three phases of detection.

Point out that the participants will use copies of the standard guide to practice taking notes on DWI detection evidence.

Solicit student's questions concerning note-taking procedures.



**Aids**

**Lesson Plan**

**Instructor Notes**



**Display**  
IV-7

court.

2. Testimonial evidence in DWI cases usually is the only way to establish that the accused was in fact the driver of the vehicle alleged to have been involved in the incident.
3. Testimonial evidence also may be the primary and sometimes the only means of establishing that the accused was impaired by alcohol and/or other drugs.
4. Even when scientific evidence is available, supportive testimonial evidence will be required to permit introduction of that scientific evidence in court.
5. Testimonial evidence is only as good as it is clear and convincing.
6. First Requirement: Prepare Testimony
  - a. Testimony preparation begins at the time of the incident.
    - o recognize significant evidence;
    - o compile complete, accurate notes;
    - o prepare complete, accurate report.
  - b. Testimony preparation continues prior to trial.

NOTE: Discuss your state's administrative license suspension hearing procedure.

NOTE: Emphasize the importance of documentation in preparation for court testimony.

Point out that participants will have opportunities to practice giving testimony, as the training progresses through the three detection phases.

**Aids**

**Lesson Plan**

**Instructor Notes**



**Display  
IV-8**

- o review notes;
  - o review case jacket/file;
  - o mentally organize elements of offense, and the evidence available to prove each element;
  - o mentally organize testimony to convey observations clearly and convincingly.
- c. Prior to the trial, discuss the details of the case and testimony with the prosecutor assigned to the case.

7. Testimony should be organized chronologically and should cover each phase of the incident.

- a. Initial observation of vehicle and/or suspect.
- b. Reinforcing cues, maneuvers or actions, observed after signaling suspect to stop, but before suspect's vehicle came to a

Point out that a pretrial conference is recommended. However, the decision whether or not to conduct one is controlled by the prosecutor. The "conference" may occur 5 minutes prior to the trial.

Point out that, in many instances, the prosecutor will control the sequence of testimony. However, the officer should organize testimony in a logical time-sequence, i.e., to present facts and observations in the order in which they occurred.

NOTE: A "cue" is defined as a "tip".

Aids	Lesson Plan	Instructor Notes
	<p>complete stop.</p> <ul style="list-style-type: none"> <li>c. Clues, statements and other evidence obtained during officer's initial face-to-face contact with suspect.</li> <li>d. Results of SFSTs administered to the suspect.</li> <li>e. The arrest itself; including procedures used to inform suspect of arrest, admonish suspect of rights, etc.</li> <li>f. Suspect's actions and statements subsequent to the arrest.</li> <li>g. Observation of suspect subsequent to the arrest.</li> <li>h. The request for the chemical test; including procedures used, admonition of rights and requirements, etc.</li> <li>i. The administration and results of the chemical test (if applicable).</li> <li>j. Interview of suspect.</li> </ul>	<p>NOTE: A “clue” is defined as something that leads to the solution of a problem.</p> <p>To be included if arresting officer was also testing officer.</p> <p>Solicit student's questions concerning testimonial requirements.</p>

## 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 \_\_\_\_\_ different outcomes.  
These are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. At each phase of detection, the officer must determine \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Evidence of DWI is largely \_\_\_\_\_ in nature.
9. Police 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 things the officer should do to prepare testimony just before the trial.
- a. \_\_\_\_\_
- b. \_\_\_\_\_
12. In court, the officer's testimony should be organized \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. The conditions and results of the Chemical test are included in the arresting officer's testimony if \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_